Legal Services
Immigration and Refugee Board

LEGISLATION GUIDE FOR THE IMMIGRATION APPEAL DIVISION

PREFACE

This Legislation Guide is intended to provide an overview of the provisions of the *Immigration Act*, the *Immigration Regulations, 1978*, the *Immigration Appeal Division Rules* and the Practice Notices which are relevant to the work of the Immigration Appeal Division.

Users of this Guide are reminded that it contains only a concise description of the relevant provisions and that the appropriate legislation must be consulted for the complete text of those provisions.

In this "Legislation Guide":

Marginal References	
Reg.	section of the *Immigration Regulations, 1978,* SOR/78-172, as amended
Rule	Rule of the *Immigration Appeal Division Rules*, SOR/93-46 (effective February 1, 1993; published in the Canada Gazette, Part II, February 10, 1993), as amended by the *Rules Amending the Immigration Appeal Division Rules,* SOR/97-363 (effective August 6, 1997; published in the Canada Gazette, Part II, August 6, 1997)
s.	section of the *Immigration Act*, as amended, including the amendments: in S. C. 1995, c. 15 (Bill C-44; in force July 10, 1995); in the *Contraventions Act* (in force August 1, 1996); and in S.C. 1997, c. 22 (Bill C-84; in force May 20, 1997)
ss.	sections of the *Immigration Act*, as amended, including the amendments in S. C. 1995, c. 15 (Bill C-44; in force July 10, 1995); in the *Contraventions Act* (in force August 1, 1996); and in S.C. 1997, c. 22 (Bill C-84; in force, May 20, 1997)
Short Forms and Abbreviations	
Act	*Immigration Act*
ADC	Assistant Deputy Chairperson
Adjudication	Adjudication Division of the IRB
CRDD	Convention Refugee Determination Division of the IRB
DC	Deputy Chairperson
GIC	Governor in Council
IAD	Immigration Appeal Division of the IRB
IAD Rules	*Immigration Appeal Division Rules*
IRB	Immigration and Refugee Board
Minister	Minister of Citizenship and Immigration
Regulations	*Immigration Regulations, 1978*
SIO	Senior Immigration Officer

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1.2 Immigration Act — Objectives (s. 3)

– the Objectives of Canadian Immigration Policy are set out in the *Act* and they include the following:

> **3.** It is hereby declared that Canadian immigration policy and the rules and regulations made under this Act shall be designed and administered in such a manner as to promote the domestic and international interests of Canada recognizing the need
>
> (...)
>
> (c) to facilitate the reunion in Canada of Canadian citizens and permanent residents with their close relatives from abroad;
>
> (...)
>
> (f) to ensure that any person who seeks admission to Canada on either a permanent or temporary basis is subject to standards of admission that do not discriminate in a manner inconsistent with the *Canadian Charter of Rights and Freedoms*;
>
> (g) to fulfil Canada's international legal obligations with respect to refugees and to uphold its humanitarian tradition with respect to the displaced and the persecuted;
>
> (...)
>
> (i) to maintain and protect the health, safety and good order of Canadian society; and
>
> (j) to promote international order and justice by denying the use of Canadian territory to persons who are likely to engage in criminal activity

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Date	Title
March 31, 1993	Designation of One-Member Panels at the IAD
July 29, 1993	Permanent and Itinerant Sitting Locations of the Board's Three Divisions
December 6, 1994	Constitutional Questions
November 6, 1997	Scheduling of Appeal Hearings
November 6, 1997	Postponements and Adjournments

2. STRUCTURE OF THE IRB (ss. 57 to 66)

2.1 Constitution of the Board

- the Immigration and Refugee Board comprises three divisions: the Convention Refugee Determination Division (CRDD), the Immigration Appeal Division (IAD), and the Adjudication Division — s. 57(1)

- the Board consists of the Chairperson and the members of each of the three divisions — s. 57(2)

- the CRDD consists of the Chairperson, and full-time and part-time members — s. 59(1)

- the CRDD has one Deputy Chairperson, and up to 10 Assistant Deputy Chairpersons — s. 59(2)

- coordinating members of the CRDD are designated from among full-time CRDD members at the ratio of one coordinating member to every 15 CRDD members — s. 59(3)

Note: *the total number of CRDD appointments is not limited by the Act*

- the IAD consists of the Chairperson and not more than 30 members, including the Deputy Chairperson and not more than 5 Assistant Deputy Chairpersons — s. 60(1),(2)

- members of the CRDD are by virtue of holding that office members of the IAD, and vice-versa, but members of the CRDD are not counted in determining the membership of the IAD under s. 60(1) — s. 59(4)

Note: *CRDD members may therefore sit on IAD cases, and IAD members may sit on CRDD cases, but CRDD members are not counted as part of the maximum of 30 IAD members*

- the Adjudication Division consists of the Chairperson, the Director General of the Adjudication Division, and such directors and adjudicators as are necessary to carry out the duties and functions of adjudicators under the *Act* — s. 58(2), s. 63.3(1)

Note: *the total number of adjudicators is not limited by the Act*

- the Executive Director of the Board is appointed by the Governor in Council — s. 64(2)

2.2 Appointment of IRB Members

- the Chairperson may be appointed by the GIC for up to 7 years, but may be removed at any time for cause — s. 58(1)

- each CRDD and IAD member may be appointed by the GIC to hold office during good behaviour for a term not exceeding 7 years — s. 61(1)

- the Chairperson and each member are eligible for re-appointment in the same or in another capacity — s. 61(3)

- the Deputy Chairperson (IAD), a majority of the ADCs (IAD) and at least 10% of the members of the CRDD and the IAD shall be barristers or advocates of at least five years standing at the bar of a province or notaries of at least five years standing at the *Chambre des notaires du Quebec* — s. 61(2)

- the Chairperson, full-time CRDD members and IAD members are required to *"devote the whole of their time to the performance of their duties under this Act"* — s. 61(5)

2.3 Inquiries into the Conduct of IRB Members

- where the Chairperson considers it appropriate, the Chairperson may recommend to the Minister of Citizenship and Immigration that an inquiry be held into the conduct of any IAD or CRDD member — s. 63.1(1)

- where the Minister thinks that such an inquiry should be held, a Federal Court judge conducts the inquiry — s. 63.1(2)

- the purpose of the inquiry is to determine whether, in the opinion of the judge, the member:

  - has become incapacitated from the due execution of that office by reason of infirmity,
  - has been guilty of misconduct,
  - has failed in the due execution of that office, or
  - has been placed, by conduct or otherwise, in a position that is incompatible with the due execution of that office — s. 63.1(1) s. 63.2(2)

- the judge conducting the inquiry has the powers of a superior court, including issuing a summons and administering an oath — s. 63.1(3)

- the inquiry is public but can be closed, upon application, on the basis of (a) public security matters, (b) financial, personal, or other matters outweighing the principle of a public inquiry, or (c) a serious possibility that the life, liberty or security of a person would be endangered as a result of the inquiry being conducted in public — s. 63.1(4),(5)

- the application for a closed inquiry can be dealt with *in camera*, if necessary — s. 63.1(6)

- technical rules of evidence do not apply at the inquiry — s. 63.1(7)

- the subject of the inquiry is entitled to reasonable notice of the subject-matter and the time and place of the inquiry, and may be represented by counsel and participate fully at the inquiry — s. 63.1(8)

- after completion of the inquiry, the judge submits a report to the Minister — s. 63.2(1)

- the judge may, in the report, recommend that the member be (i) suspended without pay, (ii) removed from office, or (iii) subject to such other disciplinary measure as the judge may specify — s. 63.2(2)

- forthwith on receiving the report, the Minister shall forward the report to the GIC, who may suspend without pay, remove from office or take any other disciplinary measure against the member to whom the report relates — s. 63.2(3)

2.4 Powers and Duties of the Chairperson

- the Chairperson is a member of each of the three divisions — s. 58(2)

- the Chairperson is the chief executive officer of the Board and has supervision over and direction of the work and staff of the Board — s. 58(3)

- the Chairperson may delegate any of the Chairperson's powers and duties to any Deputy Chairperson, Assistant Deputy Chairperson, or coordinating member of the CRDD, except for: rule-making powers, Adjudication matters, and the power to delegate the Chairperson's powers or duties — s. 58(4)

- in the absence or incapacity of the Chairperson, the Minister may authorize the Deputy Chairperson (CRDD) or Deputy Chairperson (IAD) to act as Chairperson — s. 58(5)

- the Chairperson may engage, and subject to the approval of Treasury Board, fix the remuneration of experts or persons who have special knowledge to assist the CRDD, IAD or Adjudication in any matter — s. 64(5)

- subject to the approval of the GIC, the Chairperson, in consultation with the Deputy Chairperson (CRDD), the Deputy Chairperson (IAD), and the Director General (Adjudication), may make rules for each of the divisions — s. 65(1)

- the Chairperson may, after consulting the Deputy Chairpersons, the ADCs, and the coordinating members, issue guidelines to assist CRDD members and IAD members in carrying out their duties under the *Act* — s. 65(3)

- the Chairperson may, after consulting with the Director General and the Directors of Adjudication, issue guidelines to assist adjudicators in carrying out their duties under the *Act* — s. 65(4)

- the Chairperson shall, before the commencement of each fiscal year, submit to the Minister a report on the activities of the Board in the preceding calendar year, and the Minister shall cause a copy of the report to be laid before each House of Parliament — s. 66

- the IAD shall sit at such times and at such places in Canada as are considered necessary by the Chairperson for the proper conduct of its business [see also: s. 68(1) for the CRDD; s. 80.1(3) for Adjudication] — s. 69.5(1)

- the Chairperson may designate one member to hear and determine certain IAD matters — s. 69.5(3)

2.5 *Powers and Duties of Deputy Chairpersons, Assistant Deputy Chairpersons, and Coordinating Members*

- the *Act* does not specify the duties and powers of the Deputy Chairpersons, ADCs and CRDD coordinating members, except to state that they derive their powers from a delegation from the Chairperson:

  - the Chairperson may delegate any of the Chairperson's powers and duties to any Deputy Chairperson, Assistant Deputy Chairperson, or coordinating member of the CRDD, except for: rule-making powers, Adjudication matters, and the power to delegate the Chairperson's powers or duties — s. 58(4)

- the Chairperson is required to consult with the Deputy Chairpersons and the Director General of Adjudication before making rules of the IAD, CRDD and Adjudication — s. 65(1)

- the Chairperson is required to consult with the Deputy Chairpersons, ADCs and coordinating members before issuing guidelines to members — s. 65(3)

3. IAD - GENERAL PROVISIONS (ss. 69.4, 69.5, 79, 80)

3.1 Court of Record

– the IAD is a court of record and shall have an official seal, which shall be judicially recognized	s. 69.4(1)
– a registrar shall sign and seal all orders of the IAD	Rule 28
– the Board shall establish one or more offices for the activities of the IAD, each of which is to be known as a registry	Rule 3
Note: *"Adjudication Division registry" means an office established by the Board pursuant to Rule 3 of the Adjudication Division Rules*	Rule 2
– the Board shall designate a person to be registrar at each registry	Rule 4

3.2 Jurisdiction

– the IAD has sole and exclusive jurisdiction to hear and determine all questions of law and fact, including questions of jurisdiction, in respect of : • removal order appeals (s. 70) • Minister's appeals (s. 71) • sponsorship appeals (s. 77)	s. 69.4(2)
– a person who proposes to appeal to the IAD shall give notice of the appeal in such manner and within such time as is prescribed by the IAD Rules	s. 79
• s. 70 appeals - 30 days	Rules 6(1), (2)
• s. 71 appeals - 30 days	Rule 8
• s. 77 appeals - 30 days	Rule 10

3.3 Powers

- the IAD has all the powers, rights and privileges vested in a superior court of record, with respect to:
  - attendance, swearing and examination of witnesses,
  - production and inspection of documents,
  - enforcement of its orders, and
  - other matters necessary or proper for the due exercise of its jurisdiction — s. 69.4(3)

- without limiting the generality of those powers, the IAD explicitly has the power to

  (a) issue a **summons** to any person, requiring that person to testify with respect to all matters within that person's knowledge relative to a subject-matter before the IAD and to bring and produce any documents that the person has or controls relative to that subject-matter; — Rules 21, 23; s. 69.4(3)(a)

  (b) administer **oaths** and examine any person on oath; and — Rule 16(2); s. 69.4(3)(b)

  (c) receive, during a hearing, such **additional evidence** as it may consider **credible or trustworthy** and necessary for dealing with the subject-matter before it — s. 69.4(3)(c)

  Note: *also see Rule 25, which permits evidence to be adduced at a hearing by means of telephone or videoconference facilities, and which permits the filing of affidavits and other documentary evidence, the presentation of written or oral arguments or both, the calling, questioning and cross-examination of witnesses, and the testimony of any party* — Rule 25

3.4 Venue and Change of Venue

- the IAD shall sit at such times and places in Canada as are considered necessary by the Chairperson for the proper conduct of its business — s. 69.5(1)

Note: *on July 29, 1993, a **"Practice Notice on Permanent and Itinerant Sitting Locations of the Board's Three Divisions"** was distributed. The Chairperson has designated the following locations as those where the IAD shall sit on a permanent or, as required, itinerant basis:*

Permanent Sitting Locations: Montreal, Toronto, Winnipeg, and Vancouver

Itinerant Sitting Locations: St. John's, Fredericton, Halifax, Quebec City, Ottawa, Kingston, Regina, Saskatoon, Calgary, and Edmonton

The Practice Notice also states that the Chairperson may, from time to time and as is necessary for the proper conduct of the business of the IRB, amend the above list of permanent and itinerant sitting locations

- the IAD shall, in a notice to appear, set out the date, time and place set for the conference or hearing — Rule 14(1)(a)

- a party may apply in accordance with Rule 26 (the "applications" rule) to have a conference or hearing held at a place other than the one set out in the notice to appear — Rule 12(1)

- the application for change of venue is made (i.e., filed) at the registry where the appeal is pending — Rule 12(1) Rule 26(1)(b)

- the application shall be made by a party in writing, specifying the grounds on which the application is made and the facts on which it is based — Rule 26(1)(a)

- the IAD, in determining whether to grant a change of venue, may take into consideration, where applicable,
  (a) whether it will adversely affect the proper operation of the IAD;
  (b) whether it will provide for a full and proper hearing;
  (c) whether it will dispose expeditiously of the appeal or application at issue; and
  (d) any other relevant facts — Rule 12(3)

3.5 Quorum

– **three members** constitute a quorum at the IAD, s. 69.5(2)

– however, the Chairperson may designate **one member** to hear and determine:
  - a removal order appeal (s. 70)
  - a Minister's appeal (s. 71)
  - a sponsorship appeal (s. 77)
  - an application for return to Canada for the hearing of a removal order appeal (s. 75) or
  - a motion made under the IAD Rules (see Rule 27) s. 69.5(3)

Note: *pursuant to the Chairperson's power under s. 58(4) to delegate her powers, the Chairperson has, by written delegations dated*
- *November 16, 1994, authorized the DC (IAD), and*
- *May 17, 1996, authorized the ADCs (IAD)*

to exercise the Chairperson's power under s. 69.5(3) to designate one member to hear and determine a matter referred to in that section

Note: *a **Practice Notice** from the Chairperson, dated March 31, 1993, sets out procedures regarding the **designation of one-member panels** at the IAD. The Practice Notice reads, in part:*

Criteria which may result in a three-person panel being designated include:

(i) the case raises unusually complex or novel factual or legal issues;

(ii) the case raises a significant issue on which there is divergent case law or frequent dissents at the Appeal Division level;

(iii) the case raises an issue that will have a significant impact on practice and procedure;

(iv) there are other relevant circumstances which may otherwise justify a departure from a one-member panel.

3.6 Public Hearings and Confidentiality

- an appeal to the IAD shall be conducted in public, subject to the requirements below — s. 80(1)

- where the IAD is satisfied that there is a serious possibility that the life, liberty, or security of any person would be endangered by having a public hearing, the IAD may, if an application is made therefor, take such measures and make such order as it considers necessary to ensure the confidentiality of the appeal — s. 80(2)

- an application for confidentiality under s. 80(2) is made to the IAD by motion in accordance with Rules 27(2) to (7) — Rule 20(1)

- a person (any member of the public, including a news reporter or a member of any interested organization) may apply by way of motion, in accordance with Rules 27(2) to (7), to be made a party for the purposes of intervening in a motion referred to in Rule 20(1) — Rule 20(2)

- where it considers it appropriate, the IAD may take such measures and make such order as it considers necessary to ensure the confidentiality of the hearing of an application for confidentiality — s. 80(3)

4. IAD RULES - SELECTED PROVISIONS

4.1 Presiding Member (Rule 5)

- an ADC may designate a member to act as presiding member in respect of a hearing of an appeal, application or motion brought before the IAD — Rule 5

4.2 Designated Representatives (Rule 11.1)

- where counsel for a party, other than the Minister, believes that the party is
  - under 18 years of age, or
  - is unable to appreciate the nature of the proceeding,

  counsel shall so advise the IAD forthwith in writing, and

  the IAD shall designate a representative if it concludes that the party is
  - under 18 years of age, or
  - is unable to appreciate the nature of the proceeding — Rule 11.1

4.3 Postponements and Adjournments (Rule 13)

- before the commencement of a hearing, a party may apply in accordance with Rule 26 (the "applications" rule) to have the hearing postponed — Rule 13(1)
- before the resumption of a hearing, a party may apply in accordance with Rule 26 to have the hearing adjourned — Rule 13(2)
- a party whose application for a postponement or adjournment was denied may reapply orally at the commencement or resumption of the hearing — Rule 13(3)
- the IAD, in determining whether a hearing shall be postponed or adjourned, may take into consideration, where applicable:

- whether the postponement or adjournment would unreasonably impede the proceeding;
- efforts made by the parties to proceed expeditiously;
- nature and complexity of the issues;
- nature of the evidence to be presented, and the likelihood of causing an injustice by proceeding in the absence of that evidence;
- counsel's knowledge of and experience with similar proceedings;
- amount of time already afforded the parties;
- efforts made by the parties to be present;
- efforts made by the parties to apply for the postponement or adjournment at the earliest opportunity;
- number of, and reasons for, previous postponements or adjournments;
- whether the hearing was set peremptorily; and
- any other relevant facts

Rule 13(4)

Note: *The Chairperson has issued a **Practice Notice: Postponements and Adjournments**, dated November 6, 1997, which sets out general principles and practices relating to postponements and adjournments at the IAD*

4.4 Notice to Appear for a Conference or Hearing (Rule 14)

– a notice to appear for a conference or hearing shall set out:
- the date, time and place for the conference or hearing;
- the purpose of the conference or hearing;
- the right to be represented by counsel, at the party's own expense; and
- regarding removal order appeals, that the IAD may declare the appeal abandoned if the appellant fails to communicate with the IAD or fails to inform the IAD of the person's most recent address

Rule 14(1)

– the registrar shall serve the notice to appear on every party **at least 20 days** before the date set for the conference or hearing, **except** that:

Rule 14(2)

- this requirement does **not apply** in respect of a conference or hearing that has been **postponed or adjourned**

Rule 14(2.1)

- any party may **consent** to the conference or hearing being held earlier; and

Rule 14(3)

- **notice given orally by telephone** is valid, if the parties are served with a written notice **at least 8 days** before the date set for the conference or hearing — Rule 14(4)

Note: *The Chairperson has issued a **Practice Notice: Scheduling of Appeal Hearings**, dated November 6, 1997, which sets out the general principles and practices relating to scheduling of IAD hearings*

4.5 Official Languages (Rule 15)

– a party, other the Minister, shall:
  - in writing, and
  - at least 15 days before the date set for a conference or hearing,

  notify the IAD of the official language in which the party chooses the conference or hearing to be conducted — Rule 15

4.6 Interpreters and Translation of Documents (Rules 16 and 37(3))

– the IAD shall provide an interpreter for a party or a party's witness, where the party advises the IAD
  - in writing, and
  - at least 15 days before the date set for a conference or hearing,

  that the party or witness:
  - does not understand or speak the language of the proceeding, or
  - is hearing impaired

  — Rule 16(1)

– the interpreter shall take an oath or make a solemn affirmation:
  - to interpret accurately any statements made, and
  - to translate accurately any documents that the IAD may require to be translated, in the course of the conference or hearing

  — Rule 16(2)

– all documents submitted in a language other than English or French shall be accompanied by a translation in English or French that is certified to be correct,

  unless the IAD decides that a translation is not necessary to provide for a full and proper hearing — Rule 37(3)

4.7 Conferences (Rule 17)

– where the holding of a conference is necessary for a full and proper hearing and to dispose of an appeal, application or motion expeditiously,

the IAD shall direct the parties, by a notice to appear, to attend a conference:

- before or during a hearing,
- on any matter related to the appeal, application or motion — Rule 17(1)

– at a conference, the participants shall: — Rule 17(2)

(a) provide each other with
- the number of witnesses they intend to call,
- the reasons for which each witness will be called, and
- a copy of any document, report or other material that the participants intend to produce at the hearing; and — Rule 17(2)(a)

(b) attempt to agree on means of simplifying the hearing and, as far as possible, define any pertinent issues, agree on certain facts and receive documents — Rule 17(2)(b)

– any agreement concluded shall:
- be in writing and signed by the participants, or
- be given orally at the hearing; and
- govern the hearing to the extent that it is appropriate in order to provide for a full and proper hearing and to dispose of the appeal, application or motion expeditiously — Rule 17(3)

– a member or, where a member is not present at the conference, a party, shall forthwith file at the registry any written agreement concluded and the original of any documents received during the conference — Rule 17(4)

4.8 Disclosure (Rule 18)

– any party shall, in any proceeding, serve on the other party and file at the registry:
- at least 20 days before the date set for the hearing,

- a statement of the number of witnesses they intend to call,
- the reasons for which each witness will be called, and
- a copy of any document, report or other material that the party intends to produce at the hearing,
- unless the information was produced at a conference held in accordance with Rule 17 — Rule 18(1)

– a party who intends to reply by way of documentary evidence at a hearing to the documentary evidence disclosed under Rule 18(1), shall
- serve on the other party and file at the registry a copy of the reply,
- at least 10 days before the date set for the hearing — Rule 18(2)

4.9 Expert Witnesses (Rule 19)

– a party who intends to call an expert witness at a hearing, shall serve on the other party and file at the registry:
- at least **20 days** before the date set for the hearing,
- a **report signed by the expert**, setting out the name, address and qualifications of the expert and a brief summary of the substance of the proposed testimony of that expert — Rule 19

4.10 Witness Fees (Rules 21)

– a party who calls a witness shall pay the witness the applicable fees and allowances set out in the *Federal Court Rules* — Rule 21

Note: Rule 351 of the *Federal Court Rules* states: "Witnesses shall be entitled to be paid the fees and allowances prescribed in Tariff A in the Appendix to these Rules."

4.11 Summonses (Rule 23)

– the *Act* explicitly gives the IAD the power to issue a summons — s. 69.4(3)(a)

– a party who requests the IAD to issue a summons shall:
- do so in writing, and

- file the request at the registry — Rule 23(1)

– the party who requested the issuance of the summons may make a request to the IAD for a warrant, where the person named in the summons:
  - avoids service of the summons, or
  - fails to comply with the summons — Rule 23(2)

– the request for a warrant shall be
  - made in writing, accompanied by an affidavit setting out the relevant facts, and
  - filed at the registry — Rule 23(2)

– a party who requests the issuance of a warrant shall provide information to establish that:
  (a) the person named in the summons
    - avoided service of the summons, or
    - was served with the summons and was paid or offered a reasonable amount of attendance money but failed to comply with requirements of the summons, and
  (b) the appearance of the person named in the summons is necessary to ensure a full and proper hearing — Rule 23(3)

– a warrant issued by the IAD that directs a peace officer to cause the person named in the warrant to be apprehended anywhere in Canada shall indicate the measures to be taken by the peace officer in respect of the detention or release of the person — Rule 23(4)

– the measures referred to in Rule 23(4) are:
  (a) detaining the person in custody and forthwith bringing the person before the IAD; and
  (b) releasing the person on a recognizance, with or without sureties, conditional on the person's appearance at the date, time and place specified, to give or produce evidence at a hearing before the IAD — Rule 23(5)

4.12 Exclusion of Witnesses (Rule 22)

– the IAD may, at the request of a party or of its own motion, exclude witnesses from a hearing until they are called to testify — Rule 22(1)

- no person may communicate to a witness who has been excluded pursuant to Rule 22(1) any evidence or testimony that is given during the course of the hearing, until after the witness has testified — Rule 22(2)

4.13 Party in Custody (Rule 24)

- where a party is detained, the IAD may order the person who detains the party to bring the party in custody to a conference or hearing in respect of the party — Rule 24

4.14 Evidence — Testimony, Affidavits, Videoconferences, etc. (Rule 25)

- the IAD shall permit evidence to be adduced at a hearing:

  by means of
  - such telephone or other communication facilities, including videoconference facilities, as permit all persons participating in the hearing to communicate effectively with each other, and

  in such manner as
  - would provide for a full and proper hearing, and
  - to dispose of the appeal, application or motion expeditiously, including

    (a) the filing of affidavits and other documentary evidence;
    (b) the presentation of written or oral arguments or both; and
    (c) the testimony of any party or witness — Rule 25

  Note: the IAD may "during a hearing receive such additional evidence as it may consider **credible or trustworthy** and necessary for dealing with the subject matter before it" — s. 69.4(3)(c)

4.15 Applications (Rule 26)

- subject to the right under Rule 26(2) to make the application orally, an application referred to in
  - Rule 12 (change of venue)
  - Rule 13 (postponements and adjournments)

- Rule 38 (time limits)
- Rule 40 (remedy for non-compliance with, or waiver of requirements of, the *Rules*)

shall be:

(a) made by a party **in writing**, specifying the grounds on which the application is made and the facts on which it is based;
(b) filed at the registry; and
(c) served on the other party — Rule 26(1)

– a party may make an application referred to in Rule 26(1) **orally** at a hearing where no injustice is likely to be caused to any party — Rule 26(2)

– the IAD may determine an application referred to in Rule 26(1) after all parties have been given a reasonable opportunity to make representations — Rule 26(3)

4.16 Motions (Rule 27)

– every application that is not provided for in these Rules shall be made by a party to the IAD by motion,

unless, where the application is made during a hearing, the members decide that, in the interests of justice, the application should be dealt with in some other manner — Rule 27(1)

– the motion shall consist of:
(a) a notice specifying the grounds;
(b) an affidavit setting out the facts; and
(c) a concise statement of the law and of the arguments — Rule 27(2)

– the motion shall be:
(a) served on the other party; and
(b) filed, together with proof of service, at the registry within 5 days after service — Rule 27(3)

– evidence in support of the motion shall be introduced by affidavit,

unless the IAD decides that, in the interests of justice, the evidence should be introduced in some other manner — Rule 27(4)

- the other party may, within 7 days after being served with a motion, file a **reply** stating concisely the law and arguments relied on, accompanied by an affidavit setting out the facts — Rule 27(5)

- a copy of the reply and affidavit shall be served on the other party within 7 days after service of the motion — Rule 27(7)

- the applicant may, within 7 days after service of the reply, file a **response** — Rule 27(6)

- a copy of the response shall be served on the other party within 7 days after service of the reply — Rule 27(7)

- the IAD **may dispose of a motion without a hearing** where no injustice is likely to be caused — Rule 27(8)

4.17 Withdrawal of an Appeal, Application or Motion (Rule 30)

- a party may **withdraw** an appeal, application or motion either:
  - orally during a hearing, or
  - by notice in writing filed at the registry — Rule 30(1)

- the registrar shall forthwith notify the other party in writing of the withdrawal — Rule 30(2)

  Note: *see also Rule 31 (reinstatment of withdrawn appeal, application or motion)*

4.18 Counsel of Record (Rule 30.1)

- counsel is deemed to be the counsel of record for a party, other than the Minister, where counsel
  - takes a step in a proceeding by agreeing to a date set for a hearing, or
  - by otherwise representing himself or herself as the party's counsel after a hearing date has been set — Rule 30.1(1)

- the counsel of record for a party ceases to be counsel of record when the party notifies the IAD, pursuant to Rule 36, that the counsel no longer represents the party — Rule 30.1(2)

- the counsel of record for a party may apply to the IAD for

an order to be removed as counsel of record,

- together with an affidavit setting out the grounds for the application, and
- shall serve a copy of the application and the affidavit on the party

Rule 30.1(3)

4.19 Reinstatement of a Withdrawn Appeal, Application or Motion (Rule 31)

– a party who has withdrawn an appeal, application or motion may, by motion made pursuant to Rules 27(2) to (7), apply to the IAD for **reinstatement** of the appeal, application or motion — Rule 31(1)

– where a party (other than the Minister) is not represented by counsel, the motion for reinstatement under Rule 31(1) shall include the party's address and telephone number — Rule 31(2)

– the IAD shall grant the motion for reinstatement where:
  - there are sufficient reasons why the appeal, application or motion should be reinstated, and
  - it is in the interests of justice to do so

Rule 31(3)

4.20 Service and Filing (Rules 35, 36, and 37)

4.20.1 Procedures for Service

– subject to Rule 35(5), service of any document shall be effected by:
  - personal service
  - by prepaid regular mail
  - by any mail service whereby the sender is provided with an acknowledgement of receipt,
  - by courier, or
  - by fax, under Rule 35(3)

Rule 35(1)

– where service cannot be effected in accordance with Rule 35(1), the Chairperson may direct that service be effected by such means as will, to the extent possible, provide a party with the document and as will not likely cause injustice to any party — Rule 35(5)

– a copy of any document shall also be served on that party's counsel — Rule 35(2)

4.20.2 Dispensing with Service

- where a party, other than the Minister, has not notified the IAD of the party's address or of changes of address, as required by Rule 36, the IAD may
  - direct that service of any notice required to be given under the Rules be dispensed with,
  - if reasonable efforts have been made by the IAD to locate the party

Rule 35(4.1)

4.20.3 Date of Service

- service by pre-paid regular mail shall be considered to be effected 7 days after the date of mailing

Rule 35(4)

- for the purposes of the *Act*, a person, including the Minister, shall, in the absence of proof to the contrary, **be deemed to have been notified** of a decision under the *Act*, other than a decision of a visa officer,

  (a) where the decision was not rendered in the presence of the person and the person was not entitled to written reasons:
  - 7 days after the notice was sent to the person; and

  (b) where the person was entitled to written reasons, or was entitled to request written reasons and did so within the time normally provided therefor:
  - 7 days after the written reasons were sent to the person

s. 2(4)

4.20.4 Service by Fax

- a document served by fax shall include a cover page setting out: the sender's name, address and telephone number; the name of addressee; the total number of pages; the transmitting fax number; and the name and telephone number of the person to contact in the event of transmission problems

Rule 35(3)

- the filing of a fax is deemed to be effected on the date on which it is received by the registrar, as stamped on the fax by an employee of the registry .

Rule 37(2)

4.20.5 Address for Service

– a party, other than the Minister, shall notify the IAD forthwith in writing of
  - the party's address,
  - the name, address for service, telephone number and facsimile number, if any, of the party's counsel, and
  - any changes in that information, including the fact that the party is no longer represented by counsel — Rule 36

4.20.6 Procedure for Filing

– a document shall be filed at the registry by serving it on an employee of the registry at which the file relating to the appeal is held — Rule 37(1)

– all documents submitted in a language other than English or French shall be accompanied by a translation in English or French that is certified to be correct,

unless the IAD decides that a translation is not necessary to provide for a full and proper hearing — Rule 37(3)

4.21 Time Limits (Rule 38)

– the IAD may,
  - on its own motion, or
  - on application by a party made in accordance with Rule 26 (the "applications" rule),
  - either before or after a time limit set out in the Rules has expired,
  - shorten or extend the time limit,

in order to provide for a full and proper hearing — Rule 38

4.22 General Provision: Rules Not Exhaustive (Rule 39)

– the IAD Rules are not exhaustive and where any matter not provided for in the Rules arises:
  - the IAD may take whatever measures are necessary,
  - to provide for a full and proper hearing, and
  - to dispose of the matter expeditiously — Rule 39

4.23 General Provision: Non-Compliance with Requirements (Rule 40)

– where a party does not comply with a requirement of these Rules, the IAD,
  - on its own motion, or
  - on application made pursuant to Rule 26 (the "applications" rule),
  - may permit the party to remedy the non-compliance, or
  - may waive the requirement,

  if:
  - no injustice is likely to be caused to any party, and
  - the proceeding will not be unreasonably impeded

Rule 40

5. NOTICE OF CONSTITUTIONAL QUESTIONS (*CHARTER* ARGUMENTS)

5.1 Statutory Requirements for Notice

Note: *the following provisions of the Federal Court Act apply to arguments based on the Canadian Charter of Rights and Freedoms and on any other constitutional arguments made at the IAD, because the IAD is included in the phrase used below: "federal board, commission or other tribunal"*

- where the **constitutional validity, applicability or operability of an Act of Parliament** or of any province, or of regulations made thereunder, is in question before the Court or a federal board, commission or other tribunal, the Act or regulation **shall not be adjudged to be invalid unless notice has been served on the Attorney General of Canada and the attorney general of each province** — *Federal Court Act, s. 57(1)*

- except where otherwise ordered by the Court or federal board, commission or other tribunal, the **notice shall be served at least 10 days** before the day on which the constitutional question is to be argued — *F.C.A., s. 57(2)*

- the Attorney General of Canada and the attorney general of each province are entitled to notice of any appeal or application for judicial review made in respect of the constitutional question — *F.C.A., s. 57(3)*

- the Attorney General of Canada and the attorney general of each province are entitled to adduce evidence and make submissions to the Court or federal board, commission or other tribunal in respect of the constitutional question — *F.C.A., s. 57(4)*

- where the Attorney General of Canada or the attorney general of a province makes submissions, that attorney general shall be deemed to be a party to the proceedings for the purposes of any appeal in respect of the constitutional question — *F.C.A., s. 57(5)*

5.2 Notice of Constitutional Question (Rule 27.1)

- where a party serves a notice of constitutional question pursuant to s. 57 of the *Federal Court Act*, the party shall also

- serve the notice on the other party, and
- file the notice at the registry, together with proof of service,
- at least 10 days before the date set for the hearing before the IAD — Rule 27.1

– a notice of constitutional question referred to in Rule 27.1(1) shall be in Form 2.1, "Notice of Constitutional Question", set out in the *Federal Court Rules* or in any other form that sets out

(a) the name of the appellant;
(b) the IAD file number;
(c) the date, time and place of the hearing;
(d) the specific provisions of law the validity, applicability or effect of which will be questioned;
(e) the material facts relied on; and
(f) the legal basis of the constitutional challenge — Rule 27.1(2)

5.3 IRB Practice Notice

Note: *a **Practice Notice on "Constitutional Questions"** was issued by the Chairperson on December 6, 1994. The Practice Notice reads in part:*

In addition to the statutory requirements, counsel are requested to communicate their intention to raise constitutional arguments in the IAD, CRDD, or AD, to the Registry at the earliest possible date, as it affects scheduling of the panel and pre-hearing conferences. An estimate of the length of the case should be given.

The *Federal Court Rules* provide for a Form of Notice of Constitutional Question (Form 2.1). Notice in substantially this form or any other which indicates the name of the appellant, claimant, or person concerned, the IRB Registry number, the date, time and place of the proceeding, the material facts relied on, the legal basis of the constitutional challenge and the specific provisions of law whose validity, applicability or operability will be questioned, will be accepted as adequate in the IRB divisions. The Notice should be signed by counsel, and contain the address for service and telephone number of counsel.

6. OVERVIEW OF REMOVAL ORDERS AND CONDITIONAL REMOVAL ORDERS

6.1 Description of, and Effect of, Removal Orders and Conditional Removal Orders

6.1.1 Removal Orders and Conditional Removal Orders

- the term "removal order" in the *Act* means:
  - a departure order,
  - an exclusion order, or
  - a deportation order — s. 2(1)

- the term "conditional removal order" in the *Act* means:
  - a conditional departure order, or
  - a conditional deportation order — s. 2(1)

6.1.2 Deportation Orders

- a "deportation order", as defined in the *Act*, means a deportation order made, under various listed sections of the *Act*, by an adjudicator, by the IAD, or by the Minister, and includes:
  - conditional deportation orders that have become effective, and
  - deportation orders made under previous versions of the *Act* — s. 2(1)

- where a deportation order is made against a person, the person shall not, after the person is removed from Canada, come into Canada without the **written consent of the Minister**, unless an appeal from the order has been allowed — s. 19(1)(i), s. 55(1)

- however, the person ordered deported may come into Canada without the consent of the Minister:
  - where, pursuant to s. 75, the IAD has allowed the person to return for an appeal — s. 56(1)
  - where, pursuant to s. 73(1), the IAD has stayed the order — s. 56(2)

- with respect to permanent residents, a deportation order (or conditional deportation order) is usually mandatory if the adjudicator determines that the person is described in s. 27(1); — s. 32(2)

the exception is that an adjudicator may make a departure order if the person is described in s. 27(1)(b) (breach of terms or conditions of landing) — s. 32(2.1)

6.1.3 Departure Orders

- "departure order", as defined in the *Act*, means a departure order made by an SIO under s. 27(4) or by an adjudicator under s. 32(7), and includes a conditional departure order that has become effective — s. 2(1)

Note: *it appears to be an oversight in the Act that the definition of "departure order" in s. 2(1) does not include a reference to a departure order under s. 32(2.1) and a conditional departure order under s. 32.1(2.1), both of which may be issued with respect to permanent residents described in s. 27(1)(b)*

- a person against whom a departure order has been made shall appear or be brought before an immigration officer so that the officer can verify the person's departure and issue a certificate of departure — s. 32.01

- a **certificate of departure**, referred to in s. 32.02, that verifies that a person has left Canada, **may be issued not later than 30 days**: — Reg. 27(1)
  - (a) where the departure order is stayed, after the day on which the stay is no longer in effect; — Reg. 27(1)(a)
  - (b) where the Minister has declared a moratorium in respect of the removal of all nationals of the country of which the person is a national, after the end of the moratorium; or — Reg. 27(1)(b)
  - (c) in any other case, after the day on which the departure order becomes effective — Reg. 27(1)(c)

- however, in the case of a **refugee claimant whose claim was rejected** by the CRDD, a **certificate of departure** referred to in Reg. 27(1) **may be issued not later than 30 days after the latest of** : — Reg. 27(2)
  - (a) the day on which the person is notified of the CRDD decision, if the person does not submit a timely application under the Post-Determination Refugee Claimants in Canada Class regulations ("PDRCC"); — Reg. 27(2)(a)

(b) the day on which the person is notified that an immigration officer has determined that the person is not a member of PDRCC; Reg. 27(2)(b)

(c) the day on which the person is notified of the refusal of landing, where the person is a member of PDRCC but has been refused landing; and Reg. 27(2)(c)

(d) the day on which a stay ceases to have effect, where the departure order was stayed Reg. 27(2)(d)

- where no certificate of departure is issued within the applicable period specified in the *Regulations*, **the departure order is deemed to be a deportation order** s. 32.02(1)

- where by operation of s. 32.02(1) the departure order is deemed to be a deportation order and the person is at that time no longer in Canada, the **person is deemed to have been deported from Canada** s. 32.02(2)

- s. 32.02(1) ("deemed deportation order") does not apply where the person is detained under the *Act*:
  (a) after a conditional departure order becomes effective, or
  (b) on the day a departure order is made,
  where the person is still in detention at the expiration of the applicable prescribed 30-day period s. 32.02(3)

- a person against whom a departure order has been made **may return to Canada without the written consent of the Minister**, where the person:
  - complies with s. 32.01, is issued a certificate of departure, and leaves Canada voluntarily within the prescribed 30-day period, s. 55(3)(a)(i)
  - is removed from Canada before the prescribed 30-day period and has been issued a certificate of departure, or s. 55(3)(a)(ii)
  - is detained before the expiration of the prescribed 30-day period, is still in detention under the *Act* at the end of that period, and is subsequently removed from Canada s. 55(3)(b)

6.1.4 Exclusion Orders

- an "exclusion order" in the *Act* means an exclusion order made by an SIO, an adjudicator, or the IAD, under various listed sections of the *Act* s. 2(1)

- where an exclusion order is made against a person, other than a Convention refugee claimant, the person shall not, after the person has been removed from or otherwise leaves Canada, come into Canada **without the written consent of the Minister** during the **12-month period immediately** following the day on which that person is removed from or otherwise leaves Canada, unless an appeal from the order has been allowed — s. 55(2)

- however, the person ordered excluded may come into Canada without the consent of the Minister:
  - where, pursuant to s. 75, the IAD has allowed the person to return for an appeal — s. 56(1)
  - where, pursuant to s. 73(1), the IAD has stayed the order — s. 56(2)

Note: *there is no "conditional exclusion order"; a "conditional departure order" is made where the person makes a Convention refugee claim and would otherwise have received an exclusion order*

6.1.5 Conditional Deportation Orders and Conditional Departure Orders

- where an SIO is of the opinion that a Convention refugee claimant is eligible to have a claim referred to the CRDD and that the SIO would otherwise have made an exclusion order or a departure order, the **SIO** shall make a **conditional departure order** against that person — s. 28(1)

- where a person's Convention refugee claim has been referred to (a) an SIO for a determination on eligibility, or (b) to the CRDD for a determination of the claim, an **adjudicator** shall make a **conditional deportation order** or a **conditional departure order** (where the adjudicator would otherwise have made a regular deportation order or a regular departure order, as the case may be) — s. 32.1

- a "conditional departure order" and a "conditional deportation order" in the *Act* mean a conditional departure order or a conditional deportation order, made under the various listed sections of the *Act*, **that has not become effective** — s. 2(1)

- s. 32.1(6) provides that **no conditional removal order made against a claimant is effective unless and until:**

(a) the claimant **withdraws** the claim to be a Convention refugee;

(a.1) the claimant is determined by an SIO **not to be eligible** to make a claim to be a Convention refugee and has been so notified;

(b) the claimant is declared by the CRDD to have **abandoned** the claim to be a Convention refugee and has been so notified;

(c) the claimant is determined by the CRDD **not to be a Convention refugee** and has been so notified; or

(d) the claimant is determined pursuant to s. 46.07(2) **not to have a right under s. 4(2.1) to remain in Canada** and has been so notified — s. 32.1(6)

Note: *s. 28(2) (conditional departure order made by an SIO) contains essentially the same provisions as s. 32.1(6), but it adds a reference to s. 46.07(1.1), under which an SIO determines the person's right to remain in Canada* — s. 28(2)

6.2 Removal Order Procedures - Port of Entry Cases

– subject to the *Regulations*, every person seeking to come into Canada shall appear before an immigration officer at a port of entry for examination to determine whether that person shall be allowed to come into Canada or be granted admission — s. 12(1)

– where an immigration officer is of the opinion that it would or may be contrary to the *Act* or the *Regulations* to grant admission to or otherwise let a person come into Canada, the officer shall:

- **report that person in writing to an SIO** ; or — **s. 20(1)(a)**
- allow that person to leave Canada forthwith — s. 20(1)(b)

– an SIO reviews the s. 20 report and may make an exclusion order in some cases:

- s. 19(1)(i) (returning without consent of Minister) — s. 23(4)(a)(i)
- s. 19(2)(d) (for no passport, visa, etc.) — s. 23(4)(a)(ii)

– where a Convention refugee claim is made, an SIO will make a conditional departure order, rather than an exclusion order — s. 28(1)

– an SIO causes an inquiry by an adjudicator in any other case — s. 23(4.2)(a)

- the adjudicator conducts an inquiry and may, as a result, make a removal order (s. 32) or conditional removal order (s. 32.1), as appropriate — s. 29, s. 32, s. 32.1

6.3 Removal Order Procedures - Inland Cases

6.3.1 Removal of Permanent Residents - Inland Cases

- an immigration officer shall forward a **written report to the Deputy Minister** setting out the details of any information in the possession of the officer indicating that a permanent resident is described in any of the paragraphs of s. 27(1) — **s. 27(1)**

- subject to any order or direction of the Minister, the Deputy Minister, on receiving a report under s. 27(1), shall, **if the Deputy Minister considers it appropriate to do so in the circumstances**, forward a copy of that report to an SIO and may **direct that an inquiry be held** — s. 27(3)(b)

- at the inquiry, if the adjudicator determines that the person concerned is described in s. 27(1), the adjudicator shall make a deportation order or conditional deportation order, as appropriate in the circumstances — s. 32(2), s. 32.1(2)

- however, where the person has been found described in s. 27(1)(b) (breach of terms or conditions of landing), the adjudicator may make a departure order (or conditional departure order) or a deportation order (or conditional deportation order), as appropriate — s. 32(2), s. 32(2.1), s. 32.1(2), s. 32.1(2.1)

6.3.2 Removal of Non-Permanent Residents - Inland Cases

- a person, other than a permanent resident, may be **arrested without warrant** for an inquiry or for a determination by an SIO — s. 103(2)

- an immigration officer shall, unless the person has been arrested pursuant to s. 103(2), forward a **written report** to the Deputy Minister setting out the details of any information in the possession of the officer indicating that a **person in Canada, other than a Canadian citizen or permanent resident**, is a person described in any of the paragraphs of s. 27(2) — s. 27(2)

- subject to any order or direction of the Minister, the Deputy Minister, on receiving a report under s. 27(2), shall, **if the Deputy Minister considers it appropriate to do so in the circumstances**, forward a copy of that report to an SIO and may
  - direct the SIO to determine whether the person is described in certain listed paragraphs of s. 27(2); or — s. 27(3)(a)
  - in any case, **direct that an inquiry be held** — s. 27(3)(b)

- the SIO may make a departure order or conditional departure order, as appropriate — s. 27(4), s. 28

- at the inquiry, an adjudicator may make a departure order, conditional departure order, deportation order or conditional deportation order, as appropriate in the circumstances — ss. 32(6), (7), ss. 32.1(4), (5)

6.4 Execution of Removal Orders

6.4.1 Timing of Removal

- subject to the statutory stay of removal in ss. 49 and 50, a removal order shall be executed as soon as is reasonably practicable — s. 48

- no removal order becomes invalid by reason of any lapse of time between its making and its execution — s. 51

6.4.2 Statutory Stay of Removal (ss. 49 and 50)

- the statutory stay of removal in s. 49 does not apply to
  - a person residing or sojourning in the USA or St. Pierre and Miquelon who is the subject of a s. 20 report (port of entry case); or — s. 49(1.1)(a)
  - a person not eligible to make a Convention refugee claim because of s. 46.01(1)(b) ("safe third country", a provision which is not currently in effect) — s. 49(1.1)(b)

- the execution of a removal order is stayed in a number of cases described in s. 49(1):

(a) in any case where the person against whom the order was made has a **right of appeal to the IAD**, at the request of that person, the stay is valid until the time provided for the filing of the appeal has lapsed, s. 49(1)(a)

(b) in any case where an appeal from the order has been **filed with the IAD**, the stay is valid until the appeal has been heard and disposed of or has been declared by the IAD to be abandoned, s. 49(1)(b)

(c) subject to paragraphs (d) and (f), in any case where a person has been determined by the CRDD not to be a Convention refugee or a person's **appeal has been dismissed by the IAD**, the stay is valid until the judicial review process has been completed, as described in this paragraph, s. 49(1)(c)

(d) in any case where a person who has claimed to be a Convention refugee or whose appeal has been dismissed by the IAD has been determined by an adjudicator to be described in various listed grounds of removal for **serious criminality**, security, etc., the stay is **valid until 7 days** after the order was made or becomes effective, unless the person agrees to leave earlier, s. 49(1)(d)

(e) in any case where the person has been determined to be **not eligible** to have a claim referred to the CRDD, the stay is **valid until 7 days** after the order was made or becomes effective, unless the person agrees to leave earlier, and s. 49(1)(e)

(f) in any case where the CRDD found **"no credible basis"** (s. 69.1(9.1)), the stay is **valid until 7 days** after the order was made or becomes effective, unless the person agrees to leave earlier s. 49(1)(f)

– a removal order shall not be executed where:

(a) the execution of the order would directly result in a contravention of any order made by any judicial body or officer in Canada, or s. 50(1)(a)

(b) the presence in Canada of the person is required in any criminal proceedings and the Minister stays the execution of the order pending the completion of those proceedings s. 50(1)(b)

- where the person is serving a jail sentence, the removal order shall not be executed until the person has completed the sentence, in whole or as reduced by a statute or other law or by an act of clemency — s. 50(2)

6.4.3 Place of Removal (ss. 52 and 53)

- the criteria governing the place of removal are set out in s. 52; generally a person is removed to:
  (a) the country from which the person came to Canada;
  (b) the country in which the person last permanently resided before the person came to Canada;
  (c) the country of which the person is a national or citizen; or
  (d) the country of the person's birth — s. 52(2)

- no person who is determined under the *Act* or the *Regulations* to be a Convention refugee nor any person who is not eligible to have a claim referred to the CRDD because the person has refugee status elsewhere shall be removed to a country where the person's life or freedom would be threatened for reasons of race, religion, nationality, membership in a particular social group or political opinion, — s. 53(1)

  unless the person is:
  - described in ss. 19(1)(c), (c.1)(i), 27(1)(a.1)(i), or 27(1)(d) for an offence punishable by 10 years or more, and **the Minister is of the opinion that the person constitutes a danger to the public in Canada**, or — ss. 53(1)(a), (c), and (d)
  - described in ss. 19(1)(e), (f), (g), (j), (k), or (l), and **the Minister is of the opinion that the person constitutes a danger to the security of Canada** — s. 53(1)(b)

7. SPONSORSHIP OF AN APPLICATION FOR LANDING MADE BY A MEMBER OF THE FAMILY CLASS

7.1 Procedures For Immigrant Visas

- **every immigrant shall make an application for** and obtain **a visa** before that person appears at a port of entry — s. 9(1)

- in the *Act*, **"immigrant"** means a person who seeks landing; **"landing"** means lawful permission to establish permanent residence in Canada — s. 2(1)

- in the *Act*, **"visa"** means a document issued or a stamp impression made on a document by a visa officer; **"visa officer"** means an immigration officer stationed outside Canada and authorized by order of the Minister to issue visas — s. 2(1)

Note: *a "visa", therefore, is issued <u>outside</u> Canada and can never be issued at a port of entry or in Canada; the Act, however, does permit applications for landing to be made in Canada (see s. 10.2(1))*

- a person who makes an application for a visa may apply on behalf of that person and every accompanying dependant — s. 9(1.1)

- an application for an immigrant's visa shall be **assessed by a visa officer** for the purpose of determining whether the applicant and every dependant appear to be persons who may be granted landing — s. 9(2)

- an immigration officer may require that an applicant for an immigrant visa and the dependants of that applicant, if any, **be interviewed** for the purpose of assessing the application — Reg. 22.1(1)

- every person shall **answer truthfully all questions** put to that person by the visa officer and shall **produce such documentation as may be required** by the officer to establish that the person's admission would not be contrary to the *Act* or the *Regulations* — s. 9(3)

- every immigrant shall undergo a **medical examination** by a medical officer — s. 11(1)

- a visa officer **may issue a visa** to the applicant and to each of the applicant's accompanying dependants for the purpose of identifying the holder of the visa as an immigrant who, in the opinion of the visa officer, meets the requirements of the *Act* and the *Regulations* — s. 9(4)

- subject to the *Regulations*, every person seeking to come into Canada shall appear before an immigration officer at a **port of entry for examination** — s. 12(1)

- where an immigration officer is satisfied that it would not be contrary to the *Act* or the *Regulations* to grant landing to an immigrant whom the officer has examined, the officer shall **grant landing** to that person — s. 14(2)(a)

7.2 *Legislative Authority for Applications for Landing by a Member of the Family Class*

- any **Canadian citizen or permanent resident** may, where authorized by the *Regulations*, **sponsor** the application for landing of any person who, in relation to the Canadian citizen or permanent resident, is **a member of the family class** — s. 6(2)(a)

- **"sponsor"**, as defined in the *Regulations*, means (a) a Canadian citizen or permanent resident who is at least 19 years of age, who resides in Canada and who sponsors an application for landing by a member of the family class, or (b) a Canadian citizen who is at least 19 years of age who is living abroad and who sponsors an application for landing by his or her spouse and children and who is returning to Canada with them to live — Reg. 2(1)

- the *Act* provides that "member of the family class" has the meaning assigned by the *Regulations* — s. 2(1)

- the *Regulations* provide that **"member of the family class"**, with respect to any sponsor, means:
  (a) the sponsor's spouse,
  (b) the sponsor's dependent son or dependent daughter,
  (c) the sponsor's father or mother,
  (d) the sponsor's grandfather or grandmother,
  (e) the sponsor's brother, sister, nephew, niece, grandson or granddaughter, who is an orphan and is under 19 years of age and unmarried,

(f) the sponsor's fiancée (or fiancé; see definition in Reg. 2(1)), and

(g) any child under 19 years of age whom the sponsor intends to adopt and who is
  (i) an orphan,
  (ii) an abandoned child whose parents cannot be identified,
  (iii) a child born outside of marriage who has been placed with a child welfare authority for adoption,
  (iv) a child whose parents are separated and who has been placed with a child welfare authority for adoption, or
  (v) a child one of whose parents is deceased and who has been placed with a child welfare authority for adoption, or

(h) one relative regardless of the age or relationship of the relative to the sponsor, where the sponsor does not have a spouse, son, daughter, father, mother, grandfather, grandmother, brother, sister, uncle, aunt, nephew or niece
  (i) who is a Canadian citizen,
  (i) who is a permanent resident, or
  (iii) whose application for landing the sponsor may otherwise sponsor

Reg. 2(1)

– among the other relevant definitions set out in s. 2(1) of the *Regulations*, are the definitions of: "accompanying dependant", "adopted", "daughter", "dependant", "dependent daughter", "dependent son", "father", "fiancée", "marriage", "mother", "son", "spouse", and "undertaking" Reg. 2(1)

– following is a synopsis of the key elements in the definition of **"dependent daughter"** ("dependent son" contains the same elements):

- is less than 19 years of age and unmarried,
- is enrolled and in attendance as a full-time student since attaining 19 years of age, or
- is wholly or substantially financially supported by her parents and is determined by a medical officer to be suffering from a mental or physical disability and is determined by an immigration officer to be incapable of supporting herself by reason of such disability

Reg. 2(1)

- for the purpose of the definition of "dependent daughter", a full-time student must have been "continuously enrolled" as a student since attaining 19 years of age; a person is still considered to be "continuously enrolled" where the total period of interruption of studies is not more than one year — Reg. 2(1), Reg. 2(7)

- the "family class" **does not include** a spouse who entered into the **marriage primarily for the purpose of gaining admission to Canada** as a member of the family class **and not with the intention of residing permanently with the other spouse** [marriage of convenience] — Reg. 4(3)

- **"undertaking"** is defined in Reg. 2(1) and the criteria for undertakings are described in Regs. 5 and 6 — Regs. 2(1), 5(1)(b), 6(1)(b)

Note: *the Regulations relating to "undertakings" were changed significantly by the Regulations Amending the Immigration Regulations, 1978, SOR/97-145, which came into force on April 1, 1997. It is important to determine which version of the Regulations is applicable.*

- the requirements for **fiancées** are set out in Reg. 6(1)(d):
  - (i) the sponsor and the fiancée must intend to reside together permanently after being married and **have not become engaged primarily for the purpose of the fiancée gaining admission to Canada** as a member of the family class [fiancée of convenience], — Reg. 6(1)(d)(i)
  - (ii) there must be **no legal impediments** to the proposed marriage, and — Reg. 6(1)(d)(ii)
  - (iii) the sponsor and the fiancée must have **agreed to marry each other within 90 days** after the admission of the fiancée — Reg. 6(1)(d)(iii)

- **"adopted"**, as defined in the Regulations, means a person who is adopted in accordance with the laws of a province or of a country other than Canada, where the adoption creates a **genuine relationship of parent and child**, but does **not include a person who is adopted for the purpose of gaining admission to Canada** or gaining the admission to Canada of any of the person's relatives — Reg. 2(1)

- the "family class" **does not include a person who is adopted**, or is intended to be adopted, **otherwise than in accordance with** the provisions of the *Convention on Protection of Children and Co-operation in respect of Intercountry Adoption* (**the "*Hague Convention*"**), which came into force May 1, 1995, **where the province of intended destination and the country of origin have implemented that Convention** — Reg. 4(4)

- the requirements for adopted dependent sons or daughters are set out in Reg. 6(1)(e), including the requirements that an adopted dependent son or daughter **be adopted before having attained 19 years** of age **and not have been adopted for the purpose of gaining his or her admission to Canada or the admission of any relatives** — Reg. 6(1)(e)

  - Reg. 6(1)(e) is retroactive and applies, subject to the exception described below, to all applications pending on April 15, 1994 — Reg. 6(1.01)

  - in considering whether Reg. 6(1)(e) or 6(1.01) are applicable where the undertaking of assistance was filed before March 27, 1992, reference should be made to s. 11, the transitional provision of the amendments to the *Regulations* (regarding definitions relating to adoptions and other matters) which came into force on March 27, 1992:

    > 11. The *Immigration Regulations, 1978*, as they read immediately before the coming into force of these amendments, shall continue to apply in respect of any member of the family class where, before the date of the coming into force of these amendments,
    >
    > (a) a sponsor residing in Quebec has submitted a Form 1344 on behalf of that person to the Minister; or
    >
    > (b) any other sponsor has given an undertaking to the Minister

    SOR/92-101, s. 11, February 6, 1992

- at the time the application is received by a visa officer, the son or daughter must meet the **age**, and **marital** or **student status** criteria in the definitions of "dependent son" or "dependent daughter" in Reg. 2(1) — Reg. 6(6)(a)

– at the time the visa is issued, the son or daughter must meet the criteria respecting **marital status** or **student status** set out in those definitions — Reg. 6(6)(b)

Note: *the Act also contains provisions for independent immigrants, but challenges to the decisions of visa officers on those applications are brought before the Federal Court on judicial review and do not come before the IAD*:

- subject to the *Act* and the *Regulations*, any immigrant and all dependants, if any, may be granted landing,
- if it is established to the satisfaction of an immigration officer that the immigrant meets the **selection standards** established by the *Regulations* for the purpose of determining whether or not and the degree to which the immigrant will be able to become **successfully established** in Canada, as determined in accordance with the *Regulations* — s. 6(1)

8. PERMANENT RESIDENTS

8.1 Definition of "Permanent Resident"

– in the *Act*, "permanent resident" means a person who:
(a) has been granted landing,
(b) has not become a Canadian citizen, and
(c) has not ceased to be a permanent resident pursuant to s. 24
and includes a person who has become a Canadian citizen but who subsequently ceased to be a Canadian citizen under s. 10(1) of the *Citizenship Act*, without reference to s. 10(2) of that Act — s. 2(1)

Note: *s. 10(1) of the Citizenship Act deals with revocation of Canadian citizenship where a person has obtained citizenship by fraud; s. 10(2) of that Act provides that a person is "deemed" to have obtained citizenship by fraud if the person was lawfully admitted to Canada for permanent residence by fraud. The impact on the definition of "permanent resident" in the Immigration Act is that a person who ceases to be a citizen because of a fraudulent citizenship application reverts to "permanent resident" status; a person who loses citizenship because of fraud in obtaining permanent residence loses both citizenship and permanent resident status* — *Citizenship Act*, ss. 10(1), (2)

8.2 Loss of Permanent Resident Status (s. 24)

– a person **ceases to be a permanent resident** when:
(a) the person leaves or remains outside Canada with the **intention of abandoning Canada** as that person's place of permanent residence; or — s. 24(1)(a)
(b) a **removal order** has been made against that person and the order is not quashed or its execution is not stayed by the IAD pursuant to s. 73(1) — s. 24(1)(b)

– where a permanent resident is outside Canada for **more than 183 days in any one 12 month period,** that person shall be **deemed** to have **abandoned** Canada as that person's place of permanent residence, **unless** that person satisfies an immigration officer or adjudicator that the person did not intend to abandon Canada as the person's place of permanent residence — s.24(2)

- where a permanent resident intends to leave Canada for any period of time or is outside Canada, that person may in prescribed manner [Reg. 26] make an application to an immigration officer for a returning resident permit — s. 25(1)

- possession of a valid returning resident permit issued pursuant to the *Regulations* is, in the absence of evidence to the contrary, **proof** that the person did not leave or remain outside Canada with the intention of abandoning Canada as the person's place of permanent residence — s. 25(2)

- the procedures and criteria for issuing a returning resident permit are set out in Reg. 26 — Reg. 26

- an immigration officer may issue a **returning resident permit**:
  (a) valid for a period **not exceeding 12 months**; or — Reg. 26(4)(a)
  (b) with the approval of an **SIO**, valid for a period **not exceeding 24 months** — Reg. 26(4)(b)

Note: *A person who has been determined by an SIO or an adjudicator to have ceased to be a permanent resident (see s. 24) may be described in a removal order as being a non-permanent resident (e.g., as an immigrant without a visa, ss. 19(2)(d) and 9(1); or as a non-permanent resident, under s. 27(2)). Where the person appeals that removal order to the IAD, the IAD will determine whether that person is a permanent resident. If the IAD determines that the person has not ceased to be a permanent resident, it will determine that the person does have a right of appeal to the IAD under s. 70(1) and will allow the appeal; if the IAD determines that the person has ceased to be a permanent resident, the IAD will dismiss the appeal for lack of jurisdiction.*

9. OVERVIEW OF THE INADMISSIBLE CLASSES AND REMOVAL AFTER ADMISSION (ss. 19 AND 27)

9.1 Interrelationship of Grounds for Denying Admission (s. 19) and Grounds for Causing Removal After Admission (s. 27)

– the grounds for denying admission to Canada are set out in s. 19 and the grounds for causing removal from Canada after admission are set out in s 27:

- **s. 19** sets out the **"inadmissible classes"** and applies to any person seeking "admission" (i.e., entry as a visitor, or landing as an immigrant) — s. 19
- **s. 27(1)** sets out grounds for removal and applies to a **"permanent resident"** — s. 27(1)
- **s. 27(2)** sets out grounds for removal and applies to **"a person in Canada, other than a Canadian citizen or permanent resident"** — s.27(2)
- however, both ss. 27(1)(a) and 27(2)(a) incorporate references to some of the provisions of s. 19, thus making those provisions of s. 19 applicable to certain removal proceedings involving s. 27 — s. 27(1)(a), s. 27(2)(a)
- the *Act* states that, for greater certainty, a person described in ss. 27(1)(a) or (2)(a) is "deemed" to be a member of an inadmissible class of persons — s. 27(2.01)

9.2 Inadmissible Classes (s. 19)

9.2.1 Inadmissible Classes in s. 19(1)

– the inadmissible classes set out in s. 19(1) deal with: — s. 19(1)

- **medical inadmissibility:**
  - **(i) danger to public health or to public safety, or**
  - **(ii) excessive demands on health or social services ..... s. 19(1)(a)**
- financial inadmissibility..... s. 19(1)(b)
- **criminality - conviction in Canada (maximum imprisonment 10 years or more) ..... s. 19(1)(c)**

- criminality - equivalent conviction outside Canada (maximum imprisonment 10 years or more) ..... s. 19(1)(c.1)(i)
- criminality - committed equivalent act outside Canada (maximum imprisonment 10 years or more) ..... s. 19(1)(c.1)(ii)
- criminality - membership in criminal organization ..... s. 19(1)(c.2)
- criminality - organized crime ..... s. 19(1)(d)
- subversion, espionage, terrorism, by individuals and members of a group ..... ss. 19(1)(e), and (f)
- acts of violence, by individuals and members of a group ..... s. 19(1)(g)
- not a genuine immigrant or visitor ..... s. 19(1)(h)
- no consent of Minister ..... s. 19(1)(i)
- war criminals ..... s. 19(1)(j)
- danger to security ..... s. 19(1)(k)
- senior members of governments engaged in gross human rights violations ..... s. 19(1)(l)

– the differences between ss. 19(1) and (2) are that

- the grounds in s. 19(1) are generally more serious than the grounds in s. 19(2), and

- for visitors who are inadmissible only under s. 19(2), the possibility exists of discretionary entry under s. 19(3); no such discretion is available under s. 19(3) for persons who are inadmissible under s. 19(1) or for immigrants seeking landing s. 19(3)

9.2.2 Inadmissible Classes in s. 19(2)

– the inadmissible classes set out in s. 19(2) deal with: s. 19(2)

- criminality - conviction in Canada (indictable or hybrid offences, punishable by maximum imprisonment of less than 10 years) ..... s. 19(2)(a)
- criminality - equivalent conviction outside Canada (maximum imprisonment less than 10 years) ..... s. 19(2)(a.1)(i)
- criminality - committed equivalent act outside Canada (maximum imprisonment less than 10 years) ..... s.19(2)(a.1)(ii)
- criminality - two summary convictions, in Canada or outside Canada, or a combination thereof ..... s. 19(2)(b)
- accompanying a family member who may not be granted admission ..... s. 19(2)(c)
- **persons who cannot or do not fulfil or comply with any of the conditions or requirements of the *Act* or the *Regulations* or any orders or directions lawfully made or given under the *Act* or the *Regulations*** ..... **s. 19(2)(d)**

9.2.3 Discretionary Entry under s. 19(3)

– an SIO or an adjudicator may grant entry (visitor status) to any person who is inadmissible under s. 19(2):
  - subject to appropriate terms and conditions,
  - for a period not exceeding 30 days,
  - where, in the opinion of the SIO or adjudicator, the purpose for which entry is sought justifies admission — s. 19(3)

9.3 Removal After Admission (s. 27)

9.3.1 Grounds for Removal in s. 27(1) - Permanent Residents

– the grounds for making a removal order against a **permanent resident** are set out in **s. 27(1)**: — s. 27(1)

- is a member of an inadmissible class described in ss. 19(1)(c.2), (d), (e), (f), (g), (k) or (l) ..... s. 27(1)(a)
- criminality - equivalent conviction outside Canada (maximum imprisonment 10 years or more) ..... s. 27(1)(a.1)(i)
- criminality - committed equivalent act outside Canada (maximum imprisonment 10 years or more) ..... s. 27(1)(a.1)(ii)
- criminality - before being granted landing, convicted in Canada of indictable or hybrid offence (maximum imprisonment less than 10 years) ..... s. 27(1)(a.2)
- criminality - before being granted landing, conviction outside Canada equivalent to s. 27(1)(a.2) (maximum imprisonment less than 10 years) ..... s. 27(1)(a.3)(i)
- criminality - before being granted landing, committed act outside Canada equivalent to s. 27(1)(a.2) ..... s. 27(1)(a.3)(ii)
- **if that person was granted landing subject to terms and conditions, has knowingly contravened any of those terms or conditions ..... s. 27(1)(b)**
- (repealed) ..... s. 27(1)(c)
- **has been convicted of an offence under any Act of Parliament for which a term of imprisonment of**
  - **more than six months has been imposed, or**
  - **five years or more may be imposed ..... s. 27(1)(d)**
- **was granted landing by reason of: possession of a false or improperly obtained passport, visa or other document; by fraudulent or improper means or misrepresentation of any material fact, whether exercised or made by himself or herself, or by any other person ..... s. 27(1)(e)**

- wilfully fails to support himself or herself or any dependent member of his or her family in Canada ..... s. 27(1)(f)
- war criminal (s. 19(1)(j)) who was granted landing subsequent to the coming into force of that paragraph (i.e., S.C. 1987, c. 37, in force October 30, 1987) ..... s. 27(1)(g)
- war criminal who became a member of the inadmissible class in s. 19(1)(j) subsequent to the coming into force of that paragraph (i.e., S.C. 1987, c. 37, in force October 30, 1987) ..... s. 27(1)(h)

9.3.2 Grounds for Removal in s. 27(2) - Non-Permanent Residents

– the grounds for making a removal order against a person in Canada who is **other than a Canadian citizen or permanent resident** are set out in s. 27(2): s. 27(2)

- the person is a member of an inadmissible class, other than an inadmissible class described in s. 19(1)(h) (not a genuine immigrant or visitor) or s. 19(2)(c) (accompanying family member) ..... s. 27(2)(a)
- engaged in employment in Canada contrary to the *Act* or the *Regulations* ..... s. 27(2)(b)
- (repealed) ..... s. 27(2)(c)
- convicted of any *Criminal Code* offence or of an indictable or hybrid offence under any other Act of Parliament other than the *Criminal Code* or the *Immigration Act* ..... s. 27(2)(d)
- entered Canada as a visitor and remains in Canada after that person has ceased to be a visitor [see s. 26] ..... s. 27(2)(e)
- came into Canada at any place other than a port of entry and failed to report forthwith to an immigration officer; or eluded examination or inquiry under the *Act*; or escaped from lawful custody under the *Act* ..... s. 27(2)(f)
- came into Canada or remains in Canada with a false or improperly obtained passport, visa or other document; by fraudulent or improper means or misrepresentation of any material fact, whether exercised or made by himself or herself, or by any other person ..... s. 27(2)(g)
- came into Canada without the consent of the Minister, contrary to s. 55 ..... s. 27(2)(h)
- ceased to be a Canadian citizen pursuant to s. 10(1) of the *Citizenship Act* in the circumstances described in s. 10(2) of that *Act* ..... s. 27(2)(i)
- (repealed) ..... s. 27(2)(j)
- failed to be present for a further examination for landing ... s. 27(2)(k)

- wilfully fails to support any dependent member of that person's family in Canada ..... s. 27(2)(l)

9.4 The Contraventions Act

– under the *Contraventions Act*, which came into force on August 1, 1996, the GIC may make regulations designating federal offences as "contraventions"; enforcement authorities may issue tickets to persons charged with such offences, rather than using procedures under the *Criminal Code*	*Contraventions Act*, s. 8
– the *Contraventions Regulations* designate certain offences under the following Acts as "contraventions": the *Canada Shipping Act*, the *Department of Transport Act*, the *Government Property Traffic Act*, and the *National Parks Act*	*Contraventions Regulations*
– offences designated as "contraventions" are relatively minor offences, and several sections of the *Immigration Act* specifically exclude such offences from the offences that constitute grounds for inadmissibility to Canada or grounds for removal from Canada	s. 19(1)(d)(i) s. 19(2)(a) s. 19(2)(b)(i) s. 19(2)(b)(iii) s. 27(1)(d) s. 27(2)(d)

9.5 Selected Examples of Grounds for Denying Admission or Causing Removal

9.5.1 Selected Criminality Provisions - Chart

The purpose of the following chart is to illustrate the essential elements of various criminality provisions in the *Act*. As discussed in above Section 9.1 "Interrelationship of Grounds for Denying Admission (s.19) and grounds for Causing Removal After Admission (s. 27)":

- s. 19 sets out the inadmissible classes of persons;
- s. 27(1) applies to the removal of permanent residents; and
- s. 27(2) applies to the removal of persons other than permanent residents.

SELECTED CRIMINALITY PROVISIONS	
Short Forms Used in this Chart:	
act or omission	committed an act or omission (i.e., no conviction is necessary)
equivalent (act or omission)	committed an act or omission that constitutes an offence under the laws of the place where the act or omission occurred and that, if committed in Canada, would constitute an offence in Canada
equivalent (convicted)	convicted outside Canada of an offence that, if committed in Canada, would constitute an offence in Canada
except "contraventions"	other than an offence designated as a contravention under the *Contraventions Act*
hybrid	an offence in Canada for which the offender may be prosecuted by indictment or for which the offender is punishable on summary conviction
rehabilitation exception	except persons who have satisfied the Minister that they have rehabilitated themselves and at least five years have elapsed since the expiration of any sentence imposed for the offence or since the commission of the act or omission, as the case may be

section of the *Act*	"convicted" or "act or omission"	location	type of offence	maximum term of imprisonment	rehabilitation exception
19(1)(c)	convicted	in Canada	any Act of Parliament	10 years or more	
19(1)(c.1)(i)	convicted	outside Canada	equivalent/ any Act of Parliament	10 years or more	satisfy Minister and 5 years elapsed
19(1)(c.1)(ii)	act or omission	outside Canada	equivalent/ any Act of Parliament	10 years or more	satisfy Minister and 5 years elapsed
19(2)(a)	convicted	in Canada	indictable or hybrid, under any Act of Parliament, except "contraventions"	by indictment, less than 10 years	
19(2)(a.1)(i)	convicted	outside Canada	equivalent/ any Act of Parliament	by indictment, less than 10 years	satisfy Minister and 5 years elapsed
19(2)(a.1)(ii)	act or omission	outside Canada	equivalent/ any Act of Parliament	by indictment, less than 10 years	satisfy Minister and 5 years elapsed
19(2)(b)(i)	convicted	in Canada	2 summary offences under any Act of Parliament, except "contraventions"		

19(2)(b)(ii)	convicted	outside Canada	equivalent/ 2 summary offences under any Act of Parliament		
19(2)(b)(iii)	convicted	in and outside Canada	1 summary offence in Canada under any Act of Parliament & 1 equivalent outside Canada, except "contraventions"		
27(1)(a.1)(i)	convicted	outside Canada	equivalent/ any Act of Parliament	10 years or more	satisfy Minister and 5 years elapsed
27(1)(a.1)(ii)	act or omission	outside Canada	equivalent/ any Act of Parliament	10 years or more	satisfy Minister and 5 years elapsed
27(1)(a.2)(i)	convicted, before landing	in Canada	indictable under any Act of Parliament	less than 10 years	
27(1)(a.2)(ii)	convicted, before landing	in Canada	hybrid under any Act of Parliament	less than 10 years	
27(1)(a.3)(i)	convicted, before landing	outside Canada	equivalent to s. 27(1)(a.2)	less than 10 years	satisfy Minister and 5 years elapsed
27(1)(a.3)(ii)	committed, before landing	outside Canada	equivalent to s. 27(1)(a.2)	less than 10 years	satisfy Minister and 5 years elapsed
27(1)(d)	convicted	in Canada	any Act of Parliament, except "contraventions"	more than 6 months has been imposed or 5 years or more may be imposed	
27(2)(d)	convicted	in Canada	any *Criminal Code* offence; any indictable offence under any other Act of Parliament, except the *Immigration Act*; or any hybrid offence under any other Act of Parliament, except the *Immigration Act* and except "contraventions"		

9.5.2 Medical Inadmissibility

– an inadmissible class of persons are persons who are suffering from any — s. 19(1)(a)

- **disease**, **disorder**, **disability** or other health impairment,
- as a result of the **nature**, **severity** or **probable duration** of which,
- in the **opinion of a medical officer** concurred in by at least one other medical officer,

(i) they are likely to be a **danger to public health** or to **public safety**, or — s. 19(1)(a)(i)

(ii) their admission would cause or might reasonably be expected to cause **excessive demands** on health or social services — s. 19(1)(a)(ii)

– "medical officer" means a qualified medical practitioner authorized or recognized by order of the Minister as a medical officer for the purposes of any or all provisions of the *Act* — s. 2(1)

– the factors to be considered by the medical officers in forming an opinion are set out in the *Regulations* — Reg. 22

Note: *Reg. 22 should only be read in prescribing the factors to be considered on the "public health" and "public safety" issue (s. 19(1)(a)(i)) and is not applicable in determining "excessive demands on health or social services" (s. 19(1)(a)(ii))* [see *Ismaili v. M.C.I.* (1995), 29 Imm. L.R. (2d) 1 (F.C.T.D.)]

10. SECURITY CERTIFICATES (ss. 81 and 82)

Note: *procedures for issuing security certificates against permanent residents are also set out in ss. 39 and 40; where a security certificate is issued against a permanent resident, a removal order appeal may not be made on discretionary grounds* — ss. 39 and 40; s. 70(4)(a)

procedures for issuing security certificates against non-permanent residents are also set out in s. 40.1; where a security certificate is issued against a non-permanent resident, no appeal may be made to the IAD, where the Federal Court has determined that the certificate is reasonable — s. 40.1; s. 70(3.1); s. 77(3.01)

10.1 Procedure under ss. 81 and 82

– the **Minister and the Solicitor General of Canada** may make a **report to the Review Committee** constituted under the *Canadian Security Intelligence Service Act*, where the Minister and the Solicitor General are of the opinion, based on security or criminal intelligence reports, that a person who:

- has made an appeal to the IAD under ss. 70(1)(b) or 70(3)(b),
- is deemed by s. 73(3) to have made an appeal to the IAD pursuant to ss. 70(1)(b) or 70(3)(b), or
- is a member of the family class whose application for landing is the subject of an appeal under s. 77,

is a person described

(a) in the case of a permanent resident, in ss. 19(1)(c.2), 19(1)(d)(ii), 19(1)(e), (f), (g), (k) or (l), or ss. 27(1)(a.1), 27(1)(a.3)(ii), or 27(1)(g) or (h), or

(b) in any other case, in ss. 19(1)(c.2), (d), (e), (f), (g), (j), (k), or (l) — s. 81(1); s. 81(2)

– within 10 days after the report referred to in s. 81(2) is made, notice shall be sent informing the appellant of the report and stating that following an investigation in relation thereto, the appeal may be dismissed — s. 81(3)

– the Review Committee shall investigate the grounds on which the report referred to in s. 81(2) is based — s. 81(4)

- if the Review Committee is of the opinion that it cannot perform its duties under ss. 81(4) to (8) of the *Act*, it must cease its investigation, and the Governor in Council may appoint a retired judge of a superior court to perform those duties — s. 81(4.1); ss. 81.1, 81.2, and 81.3

- the Review Committee shall, as soon as practicable, send a statement to the appellant summarizing such information available to it as will enable the appellant to be as fully informed as possible of the circumstances giving rise to the report — s. 81(5)

- **notwithstanding anything in the *Act*, the appeal to the IAD shall not be commenced or, if commenced, shall be adjourned until the Review Committee has, pursuant to s. 81(7), made a report to the GIC and the GIC has made a decision in relation thereto** — **s. 81(6)**

- the Review Committee shall, on completion of its investigation, make a report to the GIC containing its conclusion whether or not a security certificate should be issued and the grounds on which that conclusion is based — s. 81(7)

- the Review Committee shall provide the appellant with a report containing the conclusion referred to in s. 81(7) — s. 81(8)

10.2 Effect of Security Certificate

- where, after considering the report by the Review Committee, the GIC is satisfied that the person with respect to whom the report was made is a person referred to in ss. 81(2)(a) or (b), **the GIC may direct the Minister to issue a certificate** to that effect — s. 82(1)

- notwithstanding anything in the *Act*, if a certificate referred to in s. 82(1), signed by the Minister, is filed with the IAD, the **IAD shall dismiss**:
  - an appeal made pursuant to ss. 70(1)(b) or 70(3)(b),
  - an appeal deemed by s. 73(3) to have been made pursuant to ss. 70(1)(b) or 70(3)(b), or
  - an appeal made pursuant to s. 77 — s. 82(2)

Note: *therefore, where a security certificate has been issued,*

- *in the case of a removal order appeal: the IAD is required to dismiss an appeal made on discretionary grounds; the appeal may still be made on legal grounds, and*
- *in the case of a sponsorship appeal: the IAD must dismiss the appeal, regardless of whether the appeal was made on legal or discretionary grounds*

– a certificate issued under s. 82(1) is, in any prosecution or other proceeding under or arising out of the *Act*:

- conclusive proof of the matters stated therein, and
- shall be received by the IAD without proof of the signature or official character of the person appearing to have signed the certificate unless called into question by the Minister s. 82(3)

11. REMOVAL ORDER APPEALS (s. 70)

11.1 Requirement for Adjudicator to Inform Person of Right of Appeal

- where a removal order or conditional removal order is made against any person who has a right of appeal to the IAD pursuant to s. 70, the adjudicator shall forthwith inform that person of the right of appeal — s. 36

11.2 Time Limits and Procedures for Filing Notice of Appeal

- where the removal order or conditional removal order was made by an adjudicator, the person appealing the order shall:
  (i) serve a notice of appeal on the adjudicator at the conclusion of the inquiry, or
  (ii) file a notice of appeal at the Adjudication Division registry, together with a copy of the order,
  - **within 30 days** after the order was served on the person — Rule 6(1)(a)

- where the removal order or conditional removal order was made by an SIO, the person appealing the order shall:
  - **within 30 days** after the order was served on the person, serve a notice of appeal, together with a copy of the order, on an SIO — Rule 6(1)(b)

- however, the time limit for filing a notice of appeal of a conditional removal order under s. 70(2)(a) (Convention refugee who is not a permanent resident) is:
  - **30 days** after the person receives notice that the order has been confirmed by an adjudicator under s. 46.07(3)(a) — Rule 6(2)

- where a notice of appeal has been filed at the Adjudication Division registry, the registrar of the Adjudication Division shall file the notice of appeal **within 10 days** at an IAD registry — Rule 6(3)
  - for the purpose of Rule 6(3), service of a notice of appeal on an adjudicator constitutes a filing of the notice of appeal at the Adjudication Division registry — Rule 6(4)

- where an SIO has been served with a notice of appeal pursuant to Rule 6(1), the SIO shall file the notice of appeal **within 10 days** at an IAD registry — Rule 6(3)

11.3 Record for the Appeal

- **within 45 days** after a notice of appeal has been served on an adjudicator or filed at the Adjudication Division registry, **the registrar of the Adjudication Division shall** — Rule 7(1)

  (a) **serve** the parties with a certified true copy of **a record that consists of** — Rule (7)(1)(a)

  a certified true copy of the order and the notice of confirmation referred to in Rule 6(2), if any
  a transcript of the proceedings at the inquiry, **but not including a transcript** of any proceedings before an adjudicator **relating to the detention** of a party,
  a certified true copy of all documentary evidence filed at the inquiry,
  any written reasons given by the adjudicator for the decision, and
  a table of contents; and

  (b) **file** a certified true copy of **the record** at the IAD registry — Rule 7(1)(b)

- **within 45 days** after a notice of appeal has been served on an SIO pursuant to Rule 6(1)(b), **an SIO shall** — Rule 7(2)

  (a) **serve** the appellant with a certified true copy of **a record that consists of** — Rule 7(2)(a)

  (i) a certified true copy of the order and the notice of confirmation referred to in Rule 6(2), if any,
  a copy of any report and direction or any statement of arrest in respect of the appellant,
  any reasons given by the SIO for the decision,
  any other relevant information, and
  a table of contents; and

  (b) **file** a certified true copy of **the record** referred to in Rule 7(1)(a) at the IAD registry — Rule 7(2)(b)

11.4 Appeals by Permanent Residents (s. 70(1))

11.4.1 Grounds for Appeal, Generally

– a permanent resident may generally appeal a removal order or a conditional removal order to the IAD on either or both of the following grounds set out in the *Act*:

(a) *on any ground of appeal that involves a **question of law** or fact, or mixed law and fact; and*

(b) *on the ground that, having regard to **all the circumstances of the case**, the person should not be removed from Canada.* s. 70(1)(a), (b)

Note: *A person who has been determined by an SIO or an adjudicator to have ceased to be a permanent resident (see s. 24) may be described in a removal order as being a non-permanent resident (e.g., as an immigrant without a visa, ss. 19(2)(d) and 9(1); or as a non-permanent resident, under s. 27(2)). Where the person appeals that removal order to the IAD, the IAD will determine whether that person is a permanent resident. If the IAD determines that the person has not ceased to be a permanent resident, it will determine that the person does have a right of appeal to the IAD under s. 70(1) and will allow the appeal; if the IAD determines that the person has ceased to be a permanent resident, the IAD will dismiss the appeal for lack of jurisdiction.*

11.4.2 Right of Appeal, Only in Law

– the following permanent residents may appeal a deportation order or conditional deportation order to the IAD **only on a question of law** or fact, or mixed law and fact:

(1) permanent residents with respect to whom a security certificate has been issued under s. 40(1) of the *Act* (however, they may not have any right of appeal, if s. 70(5) of the *Act* applies to them) s. 70(4)(a)

(2) permanent residents who have been determined by an adjudicator to be a member of an inadmissible class described in:

- s. 19(1)(e) (persons believed will engage in acts of subversion, espionage or terrorism);
- s. 19(1)(f) (persons believed to have engaged in acts of subversion, espionage or terrorism;);
- s. 19(1)(g) (persons who there are reasonable grounds to believe will engage in acts of violence or are members of a group that is likely to engage in such acts);
- s. 19(1)(j) (persons who there are reasonable grounds to believe have engaged in acts that constitute war crimes); or
- s. 19(l)(l) (persons who were senior members in the service of a government that is or was, in the opinion of the Minister, engaged in terrorism, systemic or gross human rights violations) s. 70(4)(b)

(3) permanent residents with respect to whom a security certificate was issued after the appeal was filed (s. 82(1) of the *Act*) s. 82(2)

11.4.3 No Appeal May Be Made - Danger to the Public

– **no appeal** of a deportation order or conditional deportation order may be made to the IAD by a permanent resident where: s. 70(5)

- the **Minister is of the opinion** that the person constitutes a **danger to the public** in Canada, and
- the person has been **determined by an adjudicator** to be

(a) a member of an inadmissible class described in s. 19(1)(c) (persons **convicted** of a crime **in Canada** punishable by imprisonment of 10 years or more) or in ss. 19 (1)(c.1), (c.2) or (d); s. 70(5)(a)

(b) a person described in s. 27(1)(a.1) (person who, **outside Canada** (i) was **convicted** of an offence equivalent to a Canadian offence punishable by imprisonment of 10 years or more; or (ii) has **committed** an act that would constitute an offence in the place where it was committed and that is equivalent to a Canadian offence punishable by imprisonment of 10 years or more); or — s. 70(5)(b)

(c) a person described in 27(1)(d) (person convicted of an offence under any Act of Parliament for which a term of imprisonment of (i) more than six months has been imposed, or (ii) five years or more may be imposed) who has been convicted of an offence under any Act of Parliament for which a term of imprisonment of **10 years or more** may be imposed — s. 70(5)(c)

Transitional Note: s. 70(5) applies to an appeal that has been made on or before the coming into force of Bill C-44 (July 10, 1995) and in respect of which a hearing has not been commenced by July 10, 1995

A person who has made such an appeal may, within 15 days after notification that, in the opinion of the Minister, the person constitutes a danger to the public in Canada, make an application for judicial review under s. 82.1 of the Act with respect to the deportation order or conditional deportation order referred to in s. 70(5) — Transitional Provisions of S.C. 1995, c. 15 (Bill C-44), s. 13(4)

11.5 Appeals by Persons in Possession of Returning Resident Permits (s. 70(1))

- a person in possession of a valid returning resident permit has the same right of appeal as a permanent resident, as described above — s. 70(1)

- an immigration officer may issue a returning resident permit in accordance with the *Act* and *Regulations* — s. 25; Reg. 26

11.6 Appeals by Convention Refugees who are not Permanent Residents (s. 70(2)(a))

11.6.1 Grounds for Appeal, Generally

– a person who has been determined under the *Act* or the *Regulations* to be a Convention refugee, who is not a permanent resident, may generally appeal a removal order or a conditional removal order to the IAD — s. 70(2)(a)

– an appeal may be based on either or both of the following grounds set out in the *Act*:

(a) *on any ground of appeal that involves a **question of law** or fact, or mixed law and fact; and* — s. 70(3)(a)

(b) *on the ground that, having regard to the existence of **compassionate or humanitarian considerations**, the person should not be removed from Canada* — s. 70(3)(b)

11.6.2 Right of Appeal, Only in Law

– the following Convention refugees who are not permanent residents may appeal a deportation order or conditional deportation order to the IAD **only on a question of law** or fact, or mixed law and fact (unless they have no right of appeal pursuant to s. 70(3.1), because of a security certificate): — s. 70(4)

(1) persons who have been determined by an adjudicator to be a member of an inadmissible class described in:

- s. 19(1)(e) (persons believed will engage in acts of subversion, espionage or terrorism);
- s. 19(1)(f) (persons believed to have engaged in acts of subversion, espionage or terrorism;);
- s. 19(1)(g) (persons who there are reasonable grounds to believe will engage in acts of violence or are members of a group that is likely to engage in such acts);
- s. 19(1)(j) (persons who there are reasonable grounds to believe have engaged in acts that constitute war crimes); or

- s. 19(1)(l) (persons who were senior members in the service of a government that is or was, in the opinion of the Minister, engaged in terrorism, systemic or gross human rights violations) — s. 70(4)(b)

(2) persons with respect to whom a security certificate was issued after the appeal was filed [s. 82(1) of the *Act*] — s. 82(2)

11.6.3 No Appeal May be Made - Security Certificate

– no appeal may be made to the IAD where a security certificate against a non-permanent resident, issued under s. 40.1(1) of the *Act,* has been determined by the Federal Court, under s. 40.1(4)(d) of the *Act,* to be reasonable — s. 70(3.1)

11.6.4 No Appeal May be Made - Danger to the Public

– **no appeal** of a deportation order or conditional deportation order may be made to the IAD by a Convention refugee who is not a permanent resident **where**: — s. 70(5)

the **Minister is of the opinion** that the person constitutes a danger to the public in Canada, and

the person has been **determined by an adjudicator** to be

(a) a member of an inadmissible class described in s. 19(1)(c) (persons **convicted** of a crime **in Canada** punishable by imprisonment of 10 years or more) or ss. 19(1)(c.1), (c.2) or (d); — s. 70(5)(a)

(b) a person described in s. 27(1)(a.1) (person who, **outside Canada** (i) was **convicted** of an offence equivalent to a Canadian offence punishable by imprisonment of 10 years or more; or (ii) has **committed** an act that would constitute an offence in the place where it was committed and that is equivalent to a Canadian offence punishable by imprisonment of 10 years or more); or — s. 70(5)(b)

(c) a person described in s. 27(1)(d) (has been convicted of an offence under any Act of Parliament for which a term of imprisonment of (i) more than six months has been imposed, or (ii) five years or more may be imposed) who has been convicted of an offence under any Act of Parliament for which a term of imprisonment of **10 years or more** may be imposed — s. 70(5)(c)

Transitional Note: s. 70(5) applies to an appeal that has been made on or before the coming into force of Bill C-44 (July 10, 1995) and in respect of which a hearing has not been commenced by July 10, 1995

A person who has made such an appeal may, within 15 days after notification that, in the opinion of the Minister, the person constitutes a danger to the public in Canada, make an application for judicial review under s. 82.1 of the Act with respect to the deportation order or conditional deportation order referred to in s. 70(5) — Transitional Provisions of S.C. 1995, c. 15 (Bill C-44), s. 13(4)

11.7 Appeals by Persons with Visas (s. 70(2)(b))

11.7.1 Visitor Visa Procedures

[see also Section 7.1 "Procedures For Immigrant Visas"]

- **"visitor"**, as defined in the *Act*, means a person who is lawfully in Canada, or seeks to come into Canada, for a **temporary purpose**, other than a person who is
  (a) a Canadian citizen;
  (b) a permanent resident;
  (c) a person in possession of a permit [Minister's permit, s. 37]; or
  (d) an immigrant authorized to come into Canada pursuant to s. 14(2)(b), 23(1)(b), or 32(3)(b). — s. 2(1)

Note: *the term "visitor" includes tourists, students and temporary workers*

- except in such cases as are prescribed by the *Regulations*, every visitor shall make an application for and obtain a visa before that person appears at a port of entry — s. 9(1)

- the *Regulations* prescribe that persons referred to in

Schedule II of the *Regulations* (e.g., citizens of the United States, Britain, Mexico) are <u>not</u> required to apply for and obtain a visitor's visa before they appear at a port of entry — Reg. 13, and Schedule II

Note: *therefore, all visitors who are not referred to in Schedule II are required to apply for and obtain a visitor's visa before they appear at a port of entry. If they are in possession of a valid visa and are denied admission, they may appeal a removal order to the IAD, as described below.*

11.7.2 Right of Appeal, Generally

– a person may generally appeal a removal order or a conditional removal order to the IAD who:

- **seeks landing** (permanent residence) and was in possession of a **valid immigrant visa**, at the time that a s. 20(1)(a) report with respect to the person was made at the port of entry by an immigration officer; or — s. 70(2)(b)

- **seeks entry** (visitor status) and was in possession of a **valid visitor visa**, at the time that a s. 20(1)(a) report with respect to the person was made at the port of entry by an immigration officer — s. 70(2)(b)

11.7.3 Right of Appeal, Only in Law

Note: *the English version of s. 70(4) does not include a reference to s. 70(2)(b), whereas the French version of s. 70(4) does include a reference to s. 70(2)(b). It is expected that the English version will be amended to correct that omission.*

– the following persons with visas may appeal a deportation order or conditional deportation order to the IAD **only on a question of law** or fact, or mixed law and fact (unless they have no right of appeal pursuant to s. 70(3.1), because of a security certificate): — s. 70(4)

(1) persons who have been determined by an adjudicator to be a member of an inadmissible class described in:

- s. 19(1)(e) (persons believed will engage in acts of subversion, espionage or terrorism);

- s. 19(1)(f) (persons believed to have engaged in acts of subversion, espionage or terrorism;);

- s. 19(1)(g) (persons who there are reasonable grounds to believe will engage in acts of violence or are members of a group that is likely to engage in such acts);

- s. 19(1)(j) (persons who there are reasonable grounds to believe have engaged in acts that constitute war crimes); or

- s. 19(1)(l) (persons who were senior members in the service of a government that is or was, in the opinion of the Minister, engaged in terrorism, systemic or gross human rights violations). s. 70(4)(b)

(2) persons with respect to whom a security certificate was issued after the appeal was filed [s. 82(1) of the *Act*] s. 82(2)

11.7.4 No Appeal May be Made - Security Certificate

– no appeal may be made to the IAD where a security certificate against a non-permanent resident, issued under s. 40.1(1) of the *Act*, has been determined by the Federal Court, under s. 40.1(4)(d) of the *Act*, to be reasonable s. 70(3.1)

11.7.5 No Appeal May be Made - Danger to the Public

– **no appeal** of a deportation order or conditional deportation order may be made to the IAD by a person with a visa where: s. 70(5)

- the **Minister is of the opinion** that the person constitutes a danger to the public in Canada, and

- the person has been **determined by an adjudicator** to be

(a) a member of an inadmissible class described in s. 19(1)(c) (persons **convicted** of a crime **in Canada** punishable by imprisonment of 10 years or more) or ss. 19(1)(c.1), (c.2) or (d); — s. 70(5)(a)

(b) a person described in s. 27(1)(a.1) (person who, **outside Canada** (i) was **convicted** of an offence equivalent to a Canadian offence punishable by imprisonment of 10 years or more; or (ii) has **committed** an act that would constitute an offence in the place where it was committed and that is equivalent to a Canadian offence punishable by imprisonment of 10 years or more) — s. 70(5)(b)

(c) a person described in s. 27(1)(d) (person convicted of an offence under any Act of Parliament for which a term of imprisonment of (i) more than six months has been imposed, or (ii) five years or more may be imposed) who has been convicted of an offence under any Act of Parliament for which a term of imprisonment of **10 years or more** may be imposed — s. 70(5)(c)

Transitional Note: s. 70(5) applies to an appeal that has been made on or before the coming into force of Bill C-44 (July 10, 1995) and in respect of which a hearing has not been commenced by July 10, 1995

A person who has made such an appeal may, within 15 days after notification that, in the opinion of the Minister, the person constitutes a danger to the public in Canada, make an application for judicial review under s. 82.1 of the Act with respect to the deportation order or conditional deportation order referred to in s. 70(5) — Transitional Provisions of S.C. 1995, c. 15 (Bill C-44), s. 13(4)

11.8 Breach of Terms of Stay of Removal (s. 70(6) — Danger Opinion)

– where the IAD directs that the execution of a deportation order or a conditional deportation order be stayed, the stay is cancelled ("of no effect") and the IAD may not review the case, where:
  - the Minister is of the opinion that the person has breached the terms and conditions set by the IAD and that the person constitutes a danger to the public in Canada; and

- the person has been determined by an adjudicator to be:

  (a) a member of the inadmissible class described in ss. 19(1)(c), (c.1), (c.2) or (d);

  (b) a person described in s. 27(1)(a.1); or

  (c) a person described in s. 27(1)(d) who has been convicted of an offence under any Act of Parliament for which a term of imprisonment of **ten years or more** may be imposed — s. 70(6)

11.9 Disposition of a Removal Order Appeal

– the IAD may dispose of a removal order appeal by:

  (a) **allowing** the appeal; — s. 73(1)(a)

  (b) **dismissing** the appeal; — s. 73(1)(b)

  (c) in the case of an appeal made pursuant to s. 70(1)(b) (permanent residents: appeal on "all the circumstances of the case") or s. 70(3)(b) (Convention refugees and persons with visas: appeal on "compassionate or humanitarian considerations") respecting a removal order, **directing that the execution of the order be stayed**; or — s. 73(1)(c)

  (d) in the case of an appeal made pursuant to s. 70(1)(b) (permanent residents: appeal on "all the circumstances of the case") or s. 70(3)(b) (Convention refugees and persons with visas: appeal on "compassionate or humanitarian considerations") respecting a **conditional removal order**, by directing that the execution of the order **on its becoming effective be stayed** — s. 73(1)(d)

– where the IAD allows an appeal made pursuant to s. 70, it shall quash the removal order or conditional removal order made against the appellant and may — s. 74(1)

  (a) make any other removal order or conditional removal order that should have been made; or — s. 74(1)(a)

(b) in the case of an appellant who is not a permanent resident, direct that the appellant be examined as person a seeking admission at a port of entry — s. 74(1)(b)

11.10 Effect of Stay of Removal

– where the IAD disposes of an appeal by directing that the execution of a removal order or conditional order be stayed:

  - the person concerned shall be allowed to come into or remain in Canada under such terms and conditions as the IAD may determine, and — s. 74(2)

  - the IAD shall review the case from time to time as it considers necessary or advisable — s. 74(2)

– where, pursuant to s. 73(1), the IAD directs that the execution of a removal order be stayed, the person against whom the order was made does not require the consent of the Minister to come into Canada at any time during the period for which that execution is stayed — s. 56(2)

11.11 Review of Stay of Removal (Rule 33)

– where the IAD has disposed of an appeal by directing that the execution of a removal order or conditional order be stayed, the IAD may, at any time:

  - **amend any terms** and conditions it imposed or may impose new terms and conditions; or — s. 74(3)(a)

  - **cancel its direction** staying the execution of the order and **dismiss the appeal** and direct that the order be executed as soon as reasonably practicable, or — s. 74(3)(b)(i)

  - **cancel its direction** staying the execution of the order and **allow the appeal** and take any other action that it might have taken pursuant to s. 74(1) — s. 74(3)(b)(ii)

– where the IAD has directed a stay of removal under ss. 73(1)(c) or (d), a party may apply to the IAD to have the terms and conditions amended or to have the stay cancelled and the appeal dismissed or allowed — Rule 33(1)

- an application under Rule 33(1) shall:
  - state the grounds of the application;
  - be accompanied by (i) an affidavit setting out the facts, and (ii) a concise statement of the law and arguments;
  - be served on the other party; and
  - be filed at the registry, with two copies, within 5 days after service on the other party — Rule 33(2)

- where the IAD reviews a case of its own motion pursuant to s. 74(2), the registrar shall notify the parties of the review 30 days before the date fixed for the review — Rule 33(3)

11.12 Return to Canada for Hearing of Appeal

- where the appellant against whom a removal order or conditional removal order has been made is removed from or otherwise leaves Canada,
  - if the appellant has informed the IAD in writing of the appellant's desire to return for the hearing,
  - the IAD may allow the appellant to return to Canada for the hearing of the appeal,
  - under such terms and conditions as it may determine — s. 75

- where, pursuant to s. 75, the IAD allows the appellant to return to Canada for the hearing of the appellant's appeal against a removal order, the appellant may come into Canada for that purpose without the consent of the Minister — s. 56(1)

- where an appellant described in s. 75 informs the IAD of the appellant's desire to appear in person at the hearing of the appeal, the registrar forthwith so notifies the Minister — Rule 34(1)

- the Minister may, within 5 days after being so notified, file a written submission — Rule 34(2)

- the IAD shall notify the appellant of any submission made by the Minister and shall give the appellant a reasonable opportunity to respond in writing,

  unless the IAD decides that:
  - no further submission is required, and
  - the appellant shall be allowed to return to Canada — Rule 34(3)

11.13 Appeal Declared Abandoned

11.13.1 Grounds for Abandonment

- the IAD may declare a **removal order appeal or a conditional removal order appeal** abandoned where the appellant:
  - fails to communicate with the IAD on being requested to do so, or
  - fails to inform the IAD of the appellant's most recent address — s. 76

Note: *the abandonment provisions in s. 76 do not apply to sponsorship appeals under s. 77*

11.13.2 Application to Reopen Abandoned Appeal

- a party may, by motion made pursuant to Rules 27(2) to (7), apply to the IAD to reopen an abandoned appeal — Rule 32(1)

- where a party who is not represented by counsel makes a motion to reopen an appeal, the motion shall include the party's address and telephone number [this requirement does not apply to the Minister] — Rule 32(2)

- the IAD shall grant a motion to reopen an abandoned appeal where:
  - there are sufficient reasons why the appeal should be reopened, and
  - it is in the interests of justice to do so — Rule 32(3)

11.14 Notice of Disposition

- the IAD shall, in accordance with the IAD Rules, notify the parties of its disposition of the s. 70 appeal — s. 69.4(4)

- a registrar shall sign and seal all orders of the IAD and shall forthwith serve all parties with certified true copies of all such orders — Rule 28

11.15 Written Reasons

– the IAD shall forthwith give written reasons for its disposition of a s. 70 appeal where either of the parties so **requests within 10 days** after being notified of the disposition of the appeal — s. 69.4(5)

– a request made pursuant to s. 69.4(5) for written reasons shall be made to the IAD
  - **in writing**, and
  - filed at the registry — Rule 29

12. MINISTER'S APPEALS (s. 71)

12.1 Grounds for Appeal by Minister

- the Minister may appeal to the IAD from a decision by an adjudicator in the course of an inquiry, on any ground of appeal that involves:
  - a question of law or fact or mixed law and fact — s. 71

12.2 Notice of Appeal

- where the Minister appeals a decision pursuant to s. 71, the notice of appeal shall:
  - be served on the respondent **within 30 days** after the decision
  - be filed at the Adjudication Division registry within 5 days after such service
  - set out concisely every ground of appeal on which the Minister relies — Rule 8

12.3 Record for the Appeal

- **within 45 days** after a notice of appeal has been filed pursuant to Rule 8(b), the registrar of the Adjudication Division shall serve the parties with a certified true copy of a record that consists of
  - (a) the decision rendered by the adjudicator;
  - (b) a transcript of the proceedings at the inquiry, **but not including a transcript** of any proceedings before an adjudicator **relating to the detention** of a party;
  - (c) a certified true copy of all documentary evidence filed at the inquiry;
  - (d) any written reasons given by the adjudicator for the decision; and
  - (e) a table of contents — Rule 9(1)
- the registrar of the Adjudication Division shall file a certified true copy of the record referred to in Rule 9(1) at the IAD registry — Rule 9(2)

12.4 Order to Reopen the Inquiry for Additional Evidence

- the IAD may order that the inquiry that gave rise to the appeal be reopened by an adjudicator to receive additional evidence or testimony — s. 72(1)

- the adjudicator shall file with the IAD, for its consideration of the appeal:

  - the transcript of the reopened inquiry; and

  - the adjudicator's assessment of the new evidence — s. 72(2)

12.5 Disposition of Minister's Appeal

- the IAD may:
  a) **allow** the appeal and make the removal order or conditional removal order that the adjudicator should have made; or
  b) **dismiss** the appeal — s. 73(2)

12.6 Deemed Appeal to the IAD

- where the IAD allows the Minister's appeal pursuant to s. 71 and makes the order that the adjudicator should have made,

  - the person concerned shall be **deemed to have appealed** to the IAD on "all the circumstances" (s. 70(1)(b)) or on "compassionate or humanitarian considerations" (s. 70(3)(b)),

  - where the person would have had an appeal to the IAD if the order had been made by an adjudicator — s. 73(3)

Note: *the Minister's appeal and the appellant's "deemed" appeal are heard as part of one appeal, and the IAD issues one determination of the appeal*

12.7 Notice of Disposition

- the IAD shall, in accordance with the *IAD Rules*, notify the parties of its disposition of the s. 71 appeal — s. 69.4(4)

- a registrar shall sign and seal all orders of the IAD and shall forthwith serve all parties with certified true copies of all such orders — Rule 28

12.8 Written Reasons

- the IAD shall forthwith give written reasons for its disposition of a s. 71 appeal where either of the parties so **requests within 10 days** after being notified of the disposition of the appeal — s. 69.4(5)

- a request made pursuant to s. 69.4(5) for written reasons shall be made to the IAD
  - **in writing**, and
  - filed at the registry — Rule 29

13. SPONSORSHIP APPEALS (s. 77)

13.1 Grounds for Refusal of a Sponsored Application for Landing

- where a person has sponsored an application for landing by a member of the family class, an immigration officer or visa officer may refuse the application on the grounds that:
  (a) the sponsor does not meet the requirements of the *Regulations* respecting sponsors; or
  (b) the member of the family class does not meet the requirements of the *Act* or the *Regulations* — s. 77(1)

13.2 Notice to Sponsor of the Reasons for the Refusal

- the sponsor shall be informed of the reasons for the refusal — s. 77(1)

- however, where the application is refused on the grounds that the applicant is described in any of ss. 19(1)(c.1) to (g), (k), and (l), the sponsor shall be informed of those grounds but not of the reasons on which those grounds are based — s. 77(2)

13.3 Time for Appealing

- a sponsor who is appealing a refusal to approve an application for landing shall
  - file a notice of appeal at the registry and, wherever practicable, a copy of the notice of refusal,
  - **within 30 days** after the sponsor has been informed in writing by the Minister of the reasons for the refusal — Rule 10(1)

- where a notice of appeal has been filed pursuant to Rule 10(1), the registrar shall forthwith serve the Minister with a certified true copy of that notice — Rule 10(2)

13.4 Record for the Appeal

- **within 180 days** after a copy of the notice of appeal has been served on the Minister pursuant to Rule 10(2), **an immigration officer shall**

- **serve** the appellant with a certified true copy of **the record** described in Rule 11(2), and

- **file** a certified true copy of **that record** at the registry — Rule 11(1)

– the record for the appeal shall consist of:
  (a) a certified true copy of the application for landing;
  (b) a certified true copy of the application by the sponsor in support of the application for landing;
  (c) certified true copies of all other documents filed by the sponsor and the person being sponsored in support of the application for landing;
  (d) a statutory declaration by the immigration officer or visa officer stating all evidence relating to the application for landing and the sponsorship thereof considered by the officer, together with a statement of the reasons for refusing to approve the application for landing;
  (e) a certified true copy of the notice of refusal to approve the application for landing provided to the sponsor;
  (f) a certified true copy of the notice of refusal to approve the application for landing provided to the person being sponsored; and
  (g) a table of contents — Rule 11(2)

13.5 Grounds for Appeal by Sponsors

– a Canadian citizen or permanent resident who sponsored an application for landing that was refused may appeal to the IAD on either or both of the following grounds set out in the *Act*:

  (a) on any ground of appeal that involves a **question of law** or fact, or mixed law and fact; and — s. 77(3)(a)

  (b) on the ground that there exist **compassionate or humanitarian considerations** that warrant the granting of special relief — s. 77(3)(b)

13.6 No Appeal - Security and Criminality

– no appeal lies to the IAD in respect of a person who is the subject of a security certificate [s. 40.1(1)] that has been determined by the Federal Court, under s. 40.1(4)(d) of the *Act*, to be reasonable — s. 77(3.01)(a)

- no appeal lies to the IAD in respect of a person who is a member of an inadmissible class described in ss. 19(1)(c), (c.1), (c.2), or (d), where the Minister is of the opinion that the person constitutes a danger to the public in Canada — s. 77(3.01)(b)

Transitional Note: s. 77(3.01) applies to an appeal that has been made on or before the coming into force of Bill C-44 (July 10, 1995) and in respect of which a hearing has not been commenced by July 10, 1995

A person who has made such an appeal may, within 15 days after notification that, in the opinion of the Minister, the person constitutes a danger to the public in Canada, make an application for judicial review under s. 82.1 of the Act with respect to the matter that was the subject of the decision made under s. 77(1) — Transitional Provisions of S.C. 1995, c. 15 (Bill C-44), s. 15(3)

13.7 Exception - Where Financial Criteria are Established by a Province

- no appeal lies to the IAD under s. 77(3)(a) (question of law, fact or mixed law and fact), where the sponsor resides in a province which, by agreement entered into under s. 108, has sole responsibility for establishing and applying financial criteria in relation to sponsors, if — s. 77(3.1)

  (a) the provincial official rejected the application on those criteria or because of a breach of a previous undertaking; and — s. 77(3.1)(a)

  (b) the laws of the province provide a right of appeal — s. 77(3.1)(b)

13.8 Information Obtained in Confidence - Federal Court Determination

- with respect to a sponsorship appeal, the Minister may apply to the Federal Court - Trial Division for the non-disclosure to the appellant of information obtained in confidence from a foreign government or international organization — s. 77(3.2)

- the Trial Division shall, *in camera,* and in the absence of any counsel for the appellant:
  - examine the information; and
  - hear the Minister's submission why disclosure would be injurious to national security or to the safety of persons — s. 77(3.2)(b)

- if the Trial Division is of the opinion that disclosure to the appellant **would not be injurious to national security** or to the safety of persons, the information:
  - shall be returned to the Minister; and
  - **shall not be considered** by the IAD — s. 77(3.2)(c)

- if the Trial Division determines that the information **should not be disclosed** to the appellant, the information:
  - shall not be disclosed to the appellant; but
  - **may be considered** by the IAD in making its determination — s. 77(3.2)(d)

- where the Minister makes such an application in the Trial Division for non-disclosure to the appellant at the IAD, **the appeal at the IAD shall not be commenced or, if commenced, shall be adjourned, until the Trial Division determines the application** — s. 77(3.3)

13.9 Disposition of Sponsorship Appeals

- the IAD may dispose of a sponsorship appeal by:
  - **allowing** the appeal; or
  - **dismissing** the appeal — s. 77(4)

13.10 Decision and Reasons

Note: *the IAD is required to give reasons for its disposition of a sponsorship appeal, in contrast with a removal order appeal where reasons are not required unless requested by the parties [see s. 69.4(5)]*

- the IAD shall notify the Minister and the appellant of its decision and the reasons for its decision on the s. 77 appeal — s. 77(4)

- a registrar shall sign and seal all orders of the IAD and shall forthwith serve all parties with certified true copies of all such orders — Rule 28

13.11 Where IAD Allows the Appeal

- where the IAD allows the sponsorship appeal, an immigration officer or visa officer shall review the application for landing — s. 77(5)

- the reviewing officer shall approve the application where the sponsor and the applicant meet the requirements of the *Act* and the *Regulations*, other than the requirements on which the decision of the IAD has been given — s. 77(5)

- however, where the Minister is seeking judicial review of the decision of the IAD, the review of the application by the immigration officer or visa officer is stayed (suspended) until the Court disposes of the matter — s. 77(6)

14. JUDICIAL REVIEW - FEDERAL COURT

14.1 Trial Division

– judicial review of an IAD decision is permitted with leave of a judge of the Federal Court - Trial Division — s. 82.1(1)

– the Federal Court - Trial Division may send a case back to the IAD to be reheard in accordance with any instructions the Court might give. The *Federal Court Act* provides:

> (3) On an application for judicial review, the Trial Division may
>
> (a) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing; or
>
> (b) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal. — *Federal Court Act*, s. 18.1(3)

Note: the "appeal", with leave, to the Federal Court of Appeal under the former s. 82.3 of the *Immigration Act* (Bill C-55) has been abolished, but the grounds for judicial review by the Federal Court - Trial Division are essentially the same as the grounds were for an appeal. The grounds for judicial review under the *Federal Court Act*, are:

> (4) The Trial Division may grant relief under subsection (3) if it is satisfied that the federal board, commission or other tribunal
>
> (a) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;
>
> (b) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;
>
> (c) erred in law in making a decision or an order, whether or not the error appears on the face of the record;

(d) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;

(e) acted, or failed to act, by reason of fraud or perjured evidence; or

(f) acted in any other way that was contrary to law.

Federal Court Act, s. 18.1(4)

- the requirement to apply for leave for judicial review under s. 82.1(1) does not apply with respect to an application for judicial review of the decision of a visa officer on an application under ss. 9, 10, or 77 or to any other matter arising thereunder with respect to an application to a visa officer — s. 82.1(2)

Note: *in the case of a sponsored application for landing by a member of the family class, the sponsor may appeal to the IAD; however, in such a case, the applicant for landing (the sponsoree) may apply directly to the Federal Court for judicial review of the decision of the visa officer*

- an application for leave shall be filed within 15 days of notification of the decision — s. 82.1(3)

- unless the Court orders otherwise, there is no oral hearing into the leave application — s. 82.1(4)

- the Court may "for special reasons" extend the 15-day period for filing a leave application — s. 82.1(5)

- where leave is granted, the application is deemed to have commenced (i.e., there is no need to file papers again with the Court, as there was under Bill C-55) — s. 82.1(6)

- where leave is granted, the Court must set the matter down for hearing between 30 days and 90 days after leave is granted, unless the parties agree to go ahead earlier — s. 82.1(7)

- the leave application and the judicial application are to be determined "without delay and in a summary way" — s. 82.1(8)

14.2 Federal Court of Appeal

- there is no appeal to the Federal Court of Appeal from a decision of the Trial Division with respect to a leave application — s. 82.2

- an appeal may be made from a judgment of the Federal Court - Trial Division to the Federal Court of Appeal only where the Trial Division judge has "certified that a serious question of general importance is involved and has stated that question" — s .83(1)

- where a Trial Division judgment is appealed to the Court of Appeal, a notice of appeal must be filed within 15 days of pronouncement of the judgment — s. 83(2)

- "for special reasons", the Federal Court-Trial Division may extend that 15-day period — s. 83(3)

- a refusal to certify that "a serious question of general importance is involved" is not subject to appeal — s. 83(4)

14.3 Federal Court Rules

- the Chief Justice of the Federal Court may make special Federal Court Rules governing judicial review of *Immigration Act* matters [see *Federal Court Immigration Rules, 1993*, SOR/93-22] — s. 84